

1 BEFORE THE POLICE BOARD
2 OF THE CITY OF CHICAGO
3 IN THE MATTER OF CHARGES)Case No:
4 FILED AGAINST)17PB2940
5 POLICE OFFICER BRANDON TERNAND.)

6 - SESSION II -

7 CONTINUED REPORT OF THE VIDEOTAPED
8 PROCEEDINGS had at the hearing in the
9 above-entitled matter before Ms. Allison Wood,
10 Hearing Officer, at 30 North LaSalle Street,
11 Suite 1240, Chicago, Illinois, on May 17th,
12 2018, at the hour of 10:00 a.m.

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14 APPEARANCES:

15 CITY OF CHICAGO
16 DEPARTMENT OF LAW
17 BY: MR. JAMES FIEWEGER and
18 MS. SARA WHALEY
19 Special Assistant Corporation Counsel
20 30 North LaSalle Street
21 Suite 1020
22 Chicago, Illinois 60602,

23 on behalf of the Superintendent;

24 MR. JAMES THOMPSON and
25 MR. TIMOTHY GRACE,

26 On behalf of Respondent;

27 POLICE BOARD OF THE CITY OF CHICAGO
28 MR. MAX CAPRONI

**CERTIFIED
TRANSCRIPT**

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1 HEARING OFFICER WOOD: Good morning. We're
2 here for the matter of charges filed against
3 Officer Brandon Ternand. The case number is 17
4 BP 2940. My name is Allison Wood. I am the
5 hearing officer.

6 I'm going to ask everyone to
7 identify themselves for the record, beginning
8 with the Superintendent.

9 MR. FIEWEGER: Jim Fieweger,
10 F-I-E-W-E-G-E-R, for the Superintendent.

11 MS. WHALEY: Sara Whaley, W-H-A-L-E-Y, for
12 the Superintendent.

13 MR. THOMPSON: James Thompson on behalf of
14 Officer Brandon Ternand who is present.

15 MR. GRACE: Good morning, your Honor. My
16 name is Tim Grace, G-R-A-C-E, on behalf of
17 Mr. Ternand.

18 HEARING OFFICER WOOD: Thank you. We have
19 a preliminary matter. A copy of the
20 Respondent's motion to extend the hearing and
21 for leave to disclose a new use-of-force
22 expert. Would you like to speak about that on
23 the record?

24 MR. THOMPSON: I just rest on the motion,

1 Madam Hearing Officer.

2 HEARING OFFICER WOOD: Can you give a
3 summary so the record knows what it's about?

4 MR. THOMPSON: Well, in essence, subsequent
5 to the -- subsequent to our prehearing
6 conference, the -- our expert believes that
7 based upon his current employment status with
8 the Chicago Police Department, that based upon
9 the nature of his opinions, that could result
10 in some subsequent disciplinary action by the
11 City of Chicago or the Chicago Police
12 Department. And these events were unforeseen
13 both by myself and by our expert until
14 subsequent to the prehearing conference.

15 I would put on the record that we
16 did have conversations with the City of Chicago
17 relative to this issue, and we were most
18 appreciative of their assistance and
19 cooperation in an effort to try to resolve this
20 issue, but, unfortunately, we were not able to
21 satisfactorily resolve it, Madam Hearing
22 Officer.

23 HEARING OFFICER WOOD: So you're asking for
24 a 30-day continuance?

1 MR. THOMPSON: Certainly long enough for us
2 to present new -- present opinions to the City
3 of Chicago and proceed with testimony from that
4 expert who we anticipate will be the last
5 witness in this case.

6 HEARING OFFICER WOOD: So it's your
7 intention to go forward today?

8 MR. THOMPSON: As planned.

9 HEARING OFFICER WOOD: And tomorrow as
10 planned?

11 MR. THOMPSON: As planned.

12 HEARING OFFICER WOOD: And then looking for
13 an additional date?

14 MR. THOMPSON: Correct.

15 HEARING OFFICER WOOD: Did you want to say
16 anything in response?

17 MR. FIEWEGER: We have no objection. Now
18 that we started the hearing, it is obviously in
19 everybody's interest to complete it as
20 expeditiously as possible.

21 We talked with counsel prior to
22 this morning's hearing. Perhaps we make a
23 suggestion of setting a status like next week
24 so Jim will have some a time to figure out who

1 he's got lined up and maybe give us a better
2 idea when we can resume the hearing.

3 HEARING OFFICER WOOD: Are you agreeable to
4 setting a status?

5 MR. THOMPSON: Yes, ma'am.

6 HEARING OFFICER WOOD: We can do that at
7 the break or before we leave today. But I
8 guess, for the record, we'll let it reflect
9 that this motion has been granted, and we will
10 set a status date to determine next steps after
11 that. Is that agreeable to the parties?

12 MR. THOMPSON: Yes.

13 MR. FIEWEGER: Yes.

14 HEARING OFFICER WOOD: Are you ready to
15 proceed?

16 MR. THOMPSON: Yes, ma'am. I think we are
17 in the City's case at this point.

18 MR. FIEWEGER: We are going to call ou
19 expert.

20 HEARING OFFICER WOOD: Because we went out
21 of order.

22 MR. FIEWEGER: Yes.

23 (Witness was duly
24 sworn.)

1 MICHAEL GENNACO,
2 called as a witness herein, after having been
3 first duly sworn, was examined and testified as
4 follows:

5 DIRECT EXAMINATION

6 BY MR. FIEWEGER:

7 Q. Sir, state your name and spell your
8 last name for the court reporter.

9 A. Yes. My name is Michael Gennaco.
10 Last name is spelled G-E-N-N-A-C-O.

11 Q. Mr. Gennaco, what do you do for a
12 living?

13 A. I'm an expert in police practices.

14 Q. Whom are you employed by?

15 A. I'm self-employed.

16 Q. Do you operate a company?

17 A. I'm a sole proprietor, and I also
18 bring in subcontractors, depending on the
19 project.

20 Q. How long have you been in this line of
21 work?

22 A. I've been a police practices expert
23 for approximately 14 years.

24 Q. And in that line of work, have you

1 previously been qualified to testify as an
2 expert regarding use of force?

3 A. Yes, I have.

4 Q. About how many occasions?

5 A. Probably half a dozen times in court.

6 Q. You're here today because we asked you
7 to review the case involving the shooting of
8 Dakota Bright from November of 2012, correct?

9 A. That's correct.

10 Q. Based on your review, did you form any
11 opinions as to whether or not that shooting was
12 in compliance with the use-of-force policies
13 for the police department of the City of
14 Chicago?

15 MR. THOMPSON: I just object. I think that
16 calls for the ultimate conclusion that rests
17 with the trier of fact, the way that question
18 was worded.

19 HEARING OFFICER WOOD: Can you read that
20 for me?

21 (Said question was read
22 back.)

23 HEARING OFFICER WOOD: It sounded like he
24 is asking him for his opinions.

1 MR. THOMPSON: I don't think he can give
2 the ultimate -- that sounds like the ultimate
3 opinion in this case.

4 I believe that rests solely in
5 the province of the trier of fact or the Police
6 Board.

7 MR. FIEWEGER: There is no prohibition on
8 an expert witness expressing an opinion on the
9 ultimate issue.

10 HEARING OFFICER WOOD: I think that's why
11 he's here.

12 MR. THOMPSON: Form of the question. By
13 introducing the Chicago Police Department's
14 general order and stating it that way is the
15 only rule violation that Officer Ternand is
16 subject to, and that's the ultimate issue.

17 HEARING OFFICER WOOD: Perhaps you can
18 break it down into smaller pieces.

19 MR. FIEWEGER: There is no prohibition on
20 an expert witness expressing an opinion on the
21 ultimate issue of fact for the trier. I'll ask
22 it again.

23 HEARING OFFICER WOOD: Just ask it again.

24 BY MR. FIEWEGER:

1 Q. Did you ultimately form opinions
2 regarding the shooting on November 2012?

3 A. Yes, I did.

4 Q. And overall, what was your conclusion?

5 A. My conclusion it was based on the
6 policy of the Chicago Police Department in
7 existence at the time of the incident; that the
8 use of deadly force was contrary to that
9 policy.

10 Q. Before we get into your work on this
11 case, I'd like to cover a little bit about your
12 background.

13 What's the highest level of
14 education you've completed?

15 A. I received A JD, doctor of juris, in
16 1983.

17 Q. Where did you receive that from?

18 A. Stanford Law School.

19 Q. After you graduated from Stanford,
20 what did you do?

21 A. I clerked for a judge on the 9th
22 Circuit for a year and went to work for the
23 Civil Rights Division, U.S. Department of
24 Justice.

1 Q. Was that in Washington, DC?

2 A. It was in Washington, although cases
3 were all over the country.

4 Q. What work did you do for the
5 Department of Justice?

6 A. For two years I was in the voting
7 section, and then in 1986 I started as a
8 federal prosecutor in the criminal section of
9 the Civil Rights Division.

10 Q. Within the criminal section of the
11 Civil Rights Division, were there any
12 particular types of cases you worked on?

13 A. Yes. Yes. Three groups of cases,
14 human trafficking, hate crimes. For purposes
15 of this hearing, I was -- focused a lot of our
16 work -- my work was focused on allegations of
17 police misconduct, excessive force, violation
18 of the Fourth Amendment from a criminal
19 perspective.

20 Q. With respect to allegations of
21 excessive force, what did your work for the
22 Department of Justice involve?

23 A. We would work with the FBI to conduct
24 an initial investigation. And then under the

1 appropriate circumstances, present the facts to
2 a federal Grand Jury. And under the
3 appropriate circumstances request indictment,
4 and I was responsible for prosecuting any cases
5 coming out of those indictments.

6 Q. And how long did you remain in that
7 position with the Department of Justice?

8 A. I was with the Department of Justice
9 first in Washington and then in Los Angeles
10 from 1986 to 2001.

11 Q. While in Los Angeles, did you work for
12 the United States Attorney's Office in the
13 Southern District of California?

14 A. The Central District of California.
15 And, yes, I did, and was doing the same work.

16 Q. And, again, was your work with the
17 U.S. Attorney's Office focused on any
18 particular types of cases?

19 A. The same, I actually created a civil
20 rights section within the -- within the office.

21 Q. And during your time at the U.S.
22 Attorney's Office in Los Angeles, did you
23 continue to work on cases involving allegations
24 of excessive force by police officers?

1 A. Yes.

2 Q. About how many such cases did you
3 handle?

4 A. In Los Angeles or in Washington?

5 Q. All total.

6 A. Probably reviewed in the 15-year
7 period a thousand cases. Had Grand Juries in
8 over 20 states in the country.

9 Q. After you left -- when did you leave
10 the U.S. Attorney's Office?

11 A. I left in 2001.

12 Q. After you left the U.S. Attorney's
13 Office, what did you do?

14 A. I continued in police review, police
15 practices review. My focus in 2001 was the Los
16 Angeles County Sheriff's Department. Largest
17 sheriff's department in the country.

18 Q. What did you do for the Los Angeles
19 County Sheriff's Department?

20 A. A number of things, but one of them
21 was to review force incidents and make
22 independent opinions and decisions about
23 whether or not those force incidents were
24 consistent with departmental policy.

1 Q. Did you provide any sort of training
2 or create any sort of training courses for the
3 Sheriff's Department?

4 A. Not only the Sheriff's Department,
5 but, yes, the Sheriff's Department, correct.

6 Q. What other -- what other organizations
7 besides the Sheriff's Department have you
8 worked for or with since leaving the U.S.
9 Attorney's Office?

10 A. I haven't worked for departments, but
11 I've worked for jurisdictions as independent
12 reviewers of departments. So by that I mean I
13 don't get employed by the agency itself for
14 purpose of independence, so I will often be
15 asked by the board of supervisors, the mayor,
16 other entities, city's attorney's office to
17 provide independent review process.

18 Q. And what sort of cases do you review
19 for these municipalities?

20 A. They vary, but it's primarily use of
21 deadly force.

22 Q. And what does your work involve? I
23 mean ultimately what do they retain you to do?

24 A. I no longer am involved in the

1 investigation, although I can be a resource as
2 the investigation moves forward to ensure that
3 it's accurate and fair and objective.

4 Primarily what I'm asked to do is
5 after the evidence comes in, to evaluate the
6 evidence and make a determination as to whether
7 or not based on the evidence the actions of a
8 particular officer are within or outside the
9 policy of the department.

10 Q. Can you make an estimate about how
11 many such cases you provided opinions for
12 municipalities on?

13 A. Yes. I would say individually over
14 200. As a group, there were six of us, and I
15 oversaw the independent review process. Closer
16 to a thousand.

17 Q. And could you give us an estimate
18 about roughly what percentage of those cases
19 did you determine the use of force was not
20 justified?

21 A. Very small percentage. I would say
22 about one and a half percent I would say.

23 Q. Have you ever served as a
24 court-appointed expert regarding reform of

1 use-of-force policies?

2 A. I have.

3 Q. Can you describe that work?

4 A. Yes. I was appointed by Judge Thelton
5 Henderson after there was a settlement in a
6 case involving the California Department of
7 Corrections and Rehabilitation, and we were
8 asked to totally reform their use-of-force
9 policy, as well as their review of force
10 process.

11 Q. And did you create any sort of
12 training in connection with that?

13 A. Yeah, I was involved in the training
14 following the revamping of the policy, and I've
15 been involved in training in many other
16 agencies as well.

17 Q. What sort of training have you
18 provided to other agencies?

19 A. Everything from how to review
20 use-of-force incident to best practices on
21 training use of force, helping to develop
22 scenarios on scenario-driven training, as well
23 as -- as well as providing over-arching
24 training to officers.

1 So I've trained officers as well
2 as supervisors who are responsible for the
3 initial review of those practices.

4 Q. Is that using training courses that
5 you helped develop?

6 A. I've been involved in the
7 developmental process, yes.

8 Q. Have you had the experience of
9 testifying in connection with use-of-force
10 cases?

11 A. Yes.

12 Q. About how many occasions?

13 A. I would say, as I said earlier, about
14 half a dozen times in formal jurisdictions.

15 Q. About how many officer-involved
16 shootings have you reviewed throughout your
17 career?

18 A. As an individual, I would say over
19 200.

20 Q. Can you tell us -- can you describe
21 briefly what process you go through in order to
22 assess and determine whether or not there was
23 appropriate use of deadly force in the case?

24 A. If my responsibility is just to review

1 the evidence that has been collected pursuant
2 to the investigation, I, as a first step,
3 collect that information.

4 So all information related to the
5 investigation as part of the investigative file
6 would be something that I would look at.

7 I go beyond the actual written
8 documents and access and listen to
9 tape-recorded interviews, if they are
10 available, forensic evidence, and physical
11 evidence, photographs. Obviously anything
12 that's part of the investigative file would be
13 something I would want to look at.

14 Q. Once you've collected and reviewed the
15 material, what do you do?

16 A. I take that information and process
17 it, analyze it and stack it up against the
18 expectations of the police agency that I am
19 looking at, to see whether or not the actions
20 of the officer comport with the expectations of
21 the department as expressed by the written
22 policy.

23 Q. And is that the process that you
24 followed in this case?

1 A. That is correct.

2 Q. So you said you would typically start
3 by collecting information about the case.

4 What information have you
5 collected and reviewed in connection with this
6 case?

7 A. I started with the investigative file.
8 Looked at, as well, the analysis that was
9 conducted by the investigative agency. Looked
10 at the analysis and response that was
11 collected -- prepared by the Chicago Police
12 Department. And sort of the rebuttal response
13 that was also prepared.

14 And as I indicated earlier in
15 this case, I also listened to a number of the
16 tape-recorded interviews that were part of the
17 investigative package.

18 I looked at photographs. I
19 looked at autopsy report. And any other aspect
20 that I -- that was in the four corners of the
21 report.

22 Q. And you prepared a report describing
23 your opinions in this case, correct?

24 A. That's correct.

1 Q. And was the information that you
2 reviewed in preparing that -- preparing those
3 opinions listed in that report?

4 A. It was.

5 Q. In addition to the material that's
6 listed in the report, are there any other
7 materials that you have reviewed?

8 A. There are. I asked and received the
9 training records of the officer involved. I
10 also had an opportunity to visit the scene of
11 the incident.

12 Q. When did you make that visit?

13 A. I visited the scene yesterday.

14 Q. And does the information that you
15 obtained during that visit help in forming your
16 opinions?

17 A. It does.

18 Q. Did you speak to anybody at the
19 Chicago Police Department in connection with
20 forming your opinions?

21 A. I did.

22 Q. Who was that?

23 A. I'm going to refer to my notes. I
24 spoke to an Officer Trak, and for the court

1 reporter, I will spell it, but I would
2 pronounce it Silapaduriyang. And that is
3 spelled S-I-L-A-P-A-D-U-R-I-Y-A-N-G

4 Q. And what was that officer's position?

5 A. He was working -- he is working at the
6 training academy.

7 Q. Why did you speak to him?

8 A. I wanted to know -- I wanted to have a
9 better understanding of what training was
10 provided to officers during the relevant period
11 of time.

12 Q. And was that officer able to provide
13 you with that information?

14 A. He was able to provide me some
15 information, yes.

16 Q. Can you generally describe what
17 information you received from this officer?

18 A. I got an understanding of what kind of
19 training was being provided in the period that
20 was relevant. And I focused almost exclusively
21 in my conversation with him to any training
22 provided prior to November of 2012.

23 Q. Mr. Gennaco, did you review the
24 general order establishing the bases for using

1 deadly force for the Chicago Police Department
2 that was in effect in November of 2012?

3 A. Yes.

4 MR. FIEWEGER: Can I approach, your Honor?

5 HEARING OFFICER WOOD: Yes.

6 BY MR. FIEWEGER:

7 Q. Sir, I'm going to hand you a document
8 that we marked as Exhibit No. 4, which is a
9 copy of general order GO3-02-03 dated October
10 1st, 2012. Is that the general order that you
11 reviewed?

12 A. Yes, it is.

13 Q. What is your understanding of how this
14 general order should be assessed and applied to
15 any particular case?

16 A. Well, you start with the plain
17 language of the general order. It is helpful
18 in that -- it is helpful to best understand the
19 plain language by the fact that this policy is
20 the policy in existence at the time of the
21 incident. Actually defines some of the terms
22 on the second page. So you look at the
23 definitions, and then you essentially apply the
24 language of this policy to the facts that have

1 been obtained through the investigation.

2 Q. Is it fair to say this policy sets out
3 certain circumstances that must exist before
4 deadly force can be used by Chicago police
5 officers?

6 A. Correct.

7 Q. What are those circumstances?

8 A. There are requirements before an
9 officer is entitled to or justified in using
10 deadly force. So it's the
11 responsibility -- the way this policy reads,
12 it's the responsibility of the officer to
13 establish one of those elements in order to
14 justify the application of deadly force.

15 Q. Based on your work as an attorney in
16 the field of use of force, are you familiar
17 with the case law and standards regarding the
18 assessment of the use of force?

19 A. I am. And the key phrase in this
20 policy that incorporates those standards is the
21 phrase reasonably believes.

22 Q. What does the -- to you what does that
23 term mean?

24 A. Reasonably believes is a reference to

1 a Supreme Court opinion, Graham versus Connor,
2 that was issued in 1989 and has become the
3 essential standard that virtually every police
4 department in this country uses in assessing
5 the actions of an officer's use of force in a
6 Fourth Amendment context.

7 Q. What does that standard provide?

8 A. The standard speaks to the dictates of
9 Graham versus Connor and indicates in order to
10 evaluate an officer's reasonableness, you
11 take -- it's an objective reasonable standard,
12 and you evaluate the decision of the officer,
13 compared to a reasonable officer, how a
14 reasonable officer would perform in the field
15 under the same circumstances.

16 It's also important to evaluate
17 the totality of the circumstances in making
18 that evaluation.

19 Q. Why is it important to evaluate the
20 totality of the circumstances?

21 A. Mostly because the Supreme Court says
22 it was. But -- says it is. But essentially
23 the rationale is that you have to consider what
24 the officer was facing, what the officer's

1 challenges were at the time he made the
2 decision to use deadly force.

3 The other thing that I don't want
4 to omit is that the Supreme Court also teaches
5 that the evaluation should be considering what
6 the officer's state of mind was at the time of
7 the incident and not with 20/20 hindsight.

8 Q. In reaching your opinions in this
9 case, did you consider the events immediately
10 leading up to firing the shot in November of
11 2012?

12 A. Consistent with the Graham versus
13 Connor analysis, I had to, yes.

14 Q. So when you say the totality of the
15 circumstances in this case, does that include
16 the events involving the chase of Dakota Bright
17 through the neighborhood?

18 A. The events that lead up to the
19 decision to use deadly force are highly
20 relevant in the analysis.

21 Q. So you did consider the events
22 involved in the chase?

23 MR. GRACE: Judge, I object at this point.
24 The expert has notes in front of him, and I

1 don't know if the expert can look at notes to
2 assist him in testifying.

3 Now, I know the City could ask
4 the expert if anything could assist him in his
5 testimony, but that hasn't been decided yet.
6 He's reading off of a yellow pad.

7 I mean a witness can't testify
8 off of notes. That's not proper.

9 MR. FIEWEGER: He has not -- I've been
10 watching him. He hasn't been reading off the
11 pad. He referred to it one time for a name,
12 and he stated on the record that he was
13 referring to it.

14 MR. GRACE: I just saw him turn his page.
15 I'm not trying to be difficult. You can't
16 testify off of notes.

17 If you want to lay the foundation
18 and say would it assist you to look at your
19 report or to provide notes, but he's got pages
20 and pages of notes in front of him. It's basic
21 evidence. You don't allow a witness to do
22 that.

23 MR. FIEWEGER: He'll put his notes aside.

24 THE WITNESS: Thank you. I will use a

1 blank page. If there's a question that I need
2 to remind myself, I hope it's okay to jot down
3 a word or two.

4 HEARING OFFICER WOOD: Right. I would say
5 if there's anything that you are being asked
6 that you don't remember, and you need something
7 to help you remember, then you should say that.

8 THE WITNESS: Of course.

9 MR. GRACE: Right. Thanks.

10 HEARING OFFICER WOOD: Okay.

11 BY MR. FIEWEGER:

12 Q. So you did consider the events
13 involving the chase through the neighborhood in
14 forming your opinions?

15 A. Yes, I did.

16 Q. Are you critical of any of the actions
17 that Officer Ternand and his partners took
18 during that chase?

19 A. Yes.

20 Q. In particular, which actions are you
21 critical of?

22 A. There are a number of actions that are
23 concerning, but I think if I were to sum up my
24 concerns, it had to do with the way in which

1 the officers -- once they observed Mr. Bright,
2 the way in which they responded to that
3 observation and the way in which they
4 endeavored to apprehend him.

5 Q. Based on your experiences, is it
6 important for officers involved in a chase to
7 maintain communication during the chase?

8 A. Absolutely.

9 Q. Are you critical of any of the
10 communication efforts that were undertaken in
11 connection with this chase?

12 A. I think that after Officer Ternand got
13 out of his car, I am critical of the lack of
14 communication at that point.

15 Q. What is your understanding of what
16 communication took place after he got out of
17 the car?

18 A. None.

19 Q. It's your understanding at one point
20 he encountered Officer Bruno in the alley,
21 correct?

22 A. That's correct.

23 Q. Are you aware of any communication at
24 that point?

1 A. Yes. Officer Ternand indicated that
2 Mr. Bright was carrying a weapon. That's based
3 on the testimony of Officer Ternand and Officer
4 Bruno.

5 Q. Are you aware of any other
6 communication after he got out of the car?

7 A. No. And my earlier answer was
8 regarding radio communications.

9 Q. Why are you critical of that lack of
10 communication?

11 A. It's universally taught that
12 communication is key, particularly during the
13 tactical incident, such as a foot pursuit,
14 which is essentially what was going on after
15 Officer Ternand got out of his car.

16 Q. Why is that communication key?

17 A. It's key so that each officer who is
18 responding to the incident knows, one, what the
19 individual who is pursued is doing; and two,
20 where that is happening; three, what the
21 officer is doing and observing, so that they
22 have the ability to coordinate their response.

23 Q. When Officer Ternand exited the car on
24 Marquette, he separated from his partner,

1 Officer Razo, correct?

2 A. That's correct.

3 Q. Are you critical of that?

4 A. Yes.

5 Q. Why?

6 A. Because, again, it's taught
7 universally that it's better preferable and
8 sometimes requisite for all officers to stay
9 together in a foot pursuit.

10 A foot pursuit is probably one of
11 the most dangerous tactics that an officer can
12 engage in in an officer's career.

13 Q. Why is that?

14 A. Number of reasons. Primarily because
15 when you are involved in a foot pursuit, the
16 direction of travel is entirely dependent on
17 what the individual being pursued decides to
18 do; therefore, that individual who's being
19 chased gets to decide where the officer's going
20 to go. That's highly dangerous and the
21 suspect, the individual being pursued, has a
22 tactical advantage at that point.

23 Q. Are there other steps that Officer
24 Ternand took during this chase that you are

1 critical of?

2 A. Yes.

3 Q. What?

4 A. One of the things that happened based
5 on, again, his accounts, is that when he got
6 into the backyard, he scaled a three or
7 four-foot fence. The measurements
8 depends -- are different, depending on the
9 version that you read. But it was a
10 significantly substantial barrier that he
11 climbed over in order to continue his chase of
12 Mr. Bright.

13 Q. And why are you critical of that, sir?

14 A. Because as the officer himself admits,
15 in order to scale that fence, he had to put
16 away his weapon. He had to holster it. He had
17 to scale the fence. It put him at a higher
18 elevation making him significantly vulnerable
19 to any kind of attack that the believed-to-be
20 armed individual may have decided to do at that
21 point.

22 And it left him entirely
23 vulnerable and unarmed essentially.

24 Q. Are you familiar with what are the

1 principles of cover?

2 A. I am.

3 Q. What are principles of cover?

4 A. Principles of cover or principles of
5 concealment are essentially, again, universally
6 taught in police agencies and academies, which
7 is essentially that when you are involved in a
8 tactical situation, particularly if you're
9 involved with a person who is believed to be
10 armed, it's really critical to not put yourself
11 out in the open, to not make yourself
12 vulnerable to a draw and then a shoot and
13 aggression against you; and therefore, you
14 should always be assessing the potential cover
15 that is available to you when you are engaging
16 or attempting to arrest or apprehend the
17 individual.

18 MR. FIEWEGER: May I approach the witness?

19 HEARING OFFICER WOOD: Yes.

20 BY MR. FIEWEGER:

21 Q. Sir, I'm going to hand you what's
22 previously been marked as Exhibit No. 6. And
23 I'm referring you to page SUP 000283. Have you
24 seen that picture before, sir?

1 A. I have.

2 Q. What is that?

3 A. This appears to be a photograph of the
4 backyard, and I think it's looking opposite
5 from where Officer Ternand says he was at the
6 time that he decided to use deadly force.

7 Q. So that's a photograph of the location
8 where Officer Ternand was when he fired his
9 weapon looking from the south to the north?

10 A. Correct. And if I am correct, I
11 believe this was taken after nightfall had
12 occurred, so it doesn't really duplicate the
13 daytime conditions of the incident.

14 But other than that, my
15 understanding is a fair approximation of the
16 area in question.

17 Q. There's a tree in that photograph,
18 correct?

19 A. In the right-hand side, yes.

20 Q. What's your understanding of where
21 Officer Ternand was in relation to that tree
22 when he fired his weapon?

23 A. Based on my review of Officer
24 Ternand's several accounts, my understanding is

1 he was within arm's reach of the tree.

2 Q. Okay. Could that tree have possibly
3 provided cover?

4 A. Absolutely.

5 Q. Are you critical of Officer Ternand
6 for not using the tree as cover?

7 A. I'm critical of Officer Ternand for
8 not thinking about using the tree as cover.

9 Q. Is there anything else in particular
10 about the foot pursuit itself that you are
11 critical of?

12 A. The splitting of the partners happened
13 twice, not just once.

14 Q. What's the second issue?

15 A. Coincidentally, just as a result of
16 where Mr. Bright ended up running -- well, it
17 happened first when Officer Ternand left his
18 squad car and left his partner behind.

19 It happened a second time when he
20 ran up and encountered Officer Bruno, and then
21 the two without speaking to each other decided
22 to go in different -- opposite direct -- or
23 different directions and then ended up
24 splitting and leaving Officer Ternand in the

1 backyards of Indiana Avenue by himself.

2 Q. Again, why are you critical of that?

3 A. Because there's safety in numbers when
4 you are involved in a tactical operation like a
5 foot pursuit, it's extremely preferable, and
6 some agencies dictate it, that officers stay
7 together.

8 And I can give you an example.

9 So if the decision had been made to scale the
10 fence, and you had two officers involved in
11 that pursuit, one of them could have kept cover
12 on the other officer as they negotiated the
13 fence. That wasn't possible when Ternand was
14 by himself.

15 MR. FIEWEGER: Your Honor, may I approach
16 the witness, please?

17 HEARING OFFICER WOOD: Yes.

18 BY MR. FIEWEGER:

19 Q. Sir, I'm handing you two photographs
20 that have been marked as Exhibit No. 5 and No.
21 6. Sir, you said that you made a visit to the
22 scene of the shooting?

23 A. That is correct.

24 Q. And you did that yesterday?

1 A. Yes, sir.

2 Q. Do you recognize what's depicted in
3 photographs 5 and 6?

4 A. I do. These are photographs that
5 depict sort of the path that Mr. Bright took or
6 would have taken, perhaps, had the deadly force
7 incident not occurred.

8 Q. So is it your understanding that
9 Mr. Bright was in the backyard of the lot at
10 6727 South Indiana when he was shot?

11 A. Yes, sir.

12 Q. If you take a look at the fence that's
13 depicted in Exhibit No. 5, is that the fence on
14 the south side of the lot at 6727 South
15 Indiana?

16 A. It is.

17 Q. And if you take a look at the fence
18 and the hedgerow that's depicted in Exhibit No.
19 6, is that the fence and hedgerow that is on
20 the south side of the lot in the next lot south
21 of 6727 South Indiana?

22 A. Yes, sir.

23 Q. Now, Mr. Gennaco, is it your
24 understanding that Officer Ternand fired his

1 weapon as Dakota Bright turned back toward him
2 and was reaching toward his waistband where he
3 believed that Mr. Bright was carrying a gun?

4 A. It is my understanding that that is
5 how Officer Ternand reported the incident.

6 Q. Do you consider that account of the
7 event to justify the use of deadly force in
8 this instance?

9 A. No.

10 Q. Why not?

11 A. There were other options. One, I have
12 questions about the account itself. But
13 assuming that even that is accurate, there were
14 other options that presented themselves to
15 Officer Ternand that he chose not to take.

16 Q. You said that you have questions about
17 the account itself?

18 A. Correct.

19 Q. Do you consider the account credible?

20 A. Based on the physical and forensic
21 evidence, I do not.

22 Q. Why not?

23 A. Because it doesn't match up with the
24 physical, forensic and circumstantial evidence.

1 Q. In particular, what forensics and
2 physical evidence does it not match up with?

3 A. The first, in some ways most important
4 piece of forensic evidence, is the path and
5 trajectory of the bullet that was fired by
6 Officer Ternand.

7 Q. And what is it about that path?

8 A. As the autopsy indicates demonstrably,
9 the bullet struck Mr. Bright almost center head
10 area in a back-to-front trajectory.

11 Q. So based on the autopsy report's
12 conclusion that the bullet entered the mid-line
13 of the back of his head, can you conclude that,
14 in fact, Mr. Bright was looking away from
15 Officer Ternand at the time he fired the shot?

16 MR. THOMPSON: Objection. Leading.

17 HEARING OFFICER WOOD: It's a little
18 leading.

19 BY MR. FIEWEGER:

20 Q. Can you conclude which direction
21 Mr. Bright was facing at the time Officer
22 Ternand fired the shot?

23 A. I cannot conclude demonstrably, but if
24 you are looking at probabilities, which I

1 believe you were here, it's more probable based
2 on mere evidence that at least -- certainly at
3 the time the bullet struck him, he was facing
4 away from Ternand. And more likely at the time
5 that Ternand shot him, he was facing away from
6 Officer Ternand.

7 Q. Did you try to assess the likelihood
8 of the movements attributed to Mr. Bright from
9 Mr. Bright's perspective?

10 A. Yes.

11 Q. And why did you do that?

12 A. Because Mr. Bright isn't available to
13 testify, but I think it's important to
14 circumstantially evaluate the actions of the
15 individual being pursued.

16 Q. And did you reach any conclusions
17 about the likelihood of Mr. Bright having taken
18 actions that are attributed to him?

19 A. Yes.

20 Q. And what was that?

21 A. I concluded that based on the
22 information available -- on the information
23 that is reviewable and included in the
24 investigative report, that it would have been

1 highly unlikely for Mr. Bright to have taken
2 the actions that were described by Officer
3 Ternand.

4 Q. Why is that?

5 A. Several reasons. One, Mr. Bright had
6 no rational reason at that time to fully turn
7 on Officer Ternand, because, in reality, he did
8 not have a weapon.

9 MR. THOMPSON: Objection. Foundation, your
10 Honor.

11 HEARING OFFICER WOOD: Is it disputed?

12 MR. THOMPSON: Is what disputed, ma'am?

13 HEARING OFFICER WOOD: That he didn't have
14 a weapon at the time of the shooting. That
15 testimony was given earlier.

16 MR. THOMPSON: Right, that's not disputed.

17 HEARING OFFICER WOOD: Wasn't that given
18 earlier?

19 MR. THOMPSON: It was, but I believe he was
20 referencing what he believed Dakota was doing.

21 HEARING OFFICER WOOD: And he is explaining
22 it. I'm not sure I understand your objection.

23 MR. THOMPSON: I can't exactly say what
24 that answer was. I'd have to have it read back

1 to me.

2 HEARING OFFICER WOOD: He is trying to
3 explain it, and you are saying he didn't have
4 foundation. What foundation are you saying he
5 didn't have?

6 MR. THOMPSON: What the intention of
7 Mr. Dakota was -- Mr. Bright was at the time.

8 HEARING OFFICER WOOD: He is -- I think
9 he's laid a foundation of what his opinion is
10 based on.

11 MR. THOMPSON: My point is, how would he
12 know what the intention of Mr. Bright was at
13 any particular moment in time?

14 HEARING OFFICER WOOD: He is giving his
15 opinion, and you get to cross-examine. Do you
16 remember where you were?

17 THE WITNESS: I think I do, your Honor.

18 There was no weapon. There was
19 nothing in his pocket for him to reach toward.
20 He was successfully scaling fences and either
21 maintaining or increasing distance between
22 himself and Officer Ternand. He was, I think,
23 getting away.

24 There have been times in which I've

1 evaluated shooting incidents in which
2 individuals being pursued make decisions that
3 are not rational and do turns suggesting
4 aggression. But in my experience, those happen
5 when an individual has a history of mental
6 illness, perhaps trying to create a suicide by
7 cop situation, is under the influence of illicit
8 drugs or alcohol, or is otherwise compromised by
9 ingestion of illicit substances. And the
10 forensic evidence from the autopsy in this case
11 suggested none of this was going on with
12 Mr. Bright; that there was no prior evidence of
13 any kind of mental illness; and therefore,
14 there's, in my view, no justification or reason
15 that Bright would have turned at that time and
16 drawn a -- for a weapon that wasn't there.

17 Q. Is there anything about the manner in
18 which Officer Ternand fired his weapon that
19 enforces your opinions in this case?

20 A. Absolutely.

21 Q. What is your understanding of the
22 manner in which he fired his weapon?

23 A. My understanding, based on the
24 evidence, is that Officer Ternand used sights

1 from over 50 feet away and fired one round at
2 Mr. Bright.

3 Q. What is it about the fact he fired one
4 round that is significant to you?

5 A. Officers are trained in Chicago, and
6 elsewhere, to fire -- continue to use deadly
7 force until the threat is no longer presented.

8 Q. Is there anything about the
9 circumstances of the chase that makes it more
10 or less likely that an officer would fire more
11 than one time?

12 A. The circumstances of a chase, if an
13 officer is involved in a tactical operation
14 prior to the decision to use deadly force, it's
15 obviously going to impact the officer's level
16 of adrenalin. It's going to potentially impact
17 the judgment of the officer based on that, and
18 the fact that in order to scale a fence, in
19 order to run full tilt in chasing an individual
20 like Mr. Bright, would have been some level of
21 exertion, which also can compromise the
22 judgment of an officer.

23 Q. In your experience, is it typical for
24 an officer when confronted with a deadly force

1 situation to fire one time?

2 A. Not consistent at all.

3 Q. Can you describe that, please?

4 A. One, because of the way in which
5 officers are trained; and two, because of the
6 simple inability of officers to react to a
7 changed circumstance as quickly as one might
8 think they would be able to.

9 When officers, themselves, are
10 being aggressed by an individual, by a suspect
11 who is believed to be armed, invariably the
12 officers will fire between two to four or even
13 more rounds. One round is an extremely
14 unusual.

15 Q. Are you aware of any studies
16 supporting that?

17 A. I am.

18 Q. Can you describe them briefly?

19 A. There are a number of studies that
20 indicate, one, that is extremely rare for an
21 officer-involved shooting to occur over a
22 distance as in this case. But also that when
23 officers themselves are in fear for their
24 lives, the average number of shots range --

1 depending on the department, range from two and
2 a half to five shots, depending on the
3 information that I've reviewed.

4 Q. You indicated that the fact that
5 Officer Ternand used his sights on his weapon
6 was significant to you. Why is that?

7 A. Again, in my experience, when officers
8 are being aggressed with a deadly threat and
9 are experiencing a sudden movement causing them
10 to have to react and use deadly force in a,
11 quote, "split second decision," that generally
12 officers do not feel they have the time to line
13 up the target using sights the way they are
14 trained on the range to do in a situation.
15 Instead, what they're forced to do is
16 essentially what we call point and shoot.

17 Q. Now, it's your understanding that
18 Officer Ternand fired one shot and one shot hit
19 the target, correct?

20 A. That's correct.

21 Q. Is that fact significant to you?

22 A. It's extremely unusual that that
23 occurred.

24 Q. Why is that?

1 A. Again, because generally, when
2 officers fire, particularly at that distance
3 and particularly under the stress of being
4 aggressed with a deadly force situation they
5 believe they need to eliminate, they miss. At
6 least with some of the rounds.

7 Q. So I take it you do not find credible
8 of the account that Dakota Bright turned
9 towards Officer Ternand and presented him with
10 an aggressive manner?

11 MR. THOMPSON: Objection. Leading.

12 HEARING OFFICER WOOD: I'll allow it.

13 THE WITNESS: To me, it doesn't line up
14 with the physical evidence and my experience
15 reviewing hundreds of officer involved
16 shootings.

17 BY MR. FIEWEGER:

18 Q. I'd ask you for the following
19 questions to assume, in fact, Dakota Bright did
20 take the actions that are attributed to him.
21 Under those circumstances, do you think the use
22 of deadly force in this case was appropriate?

23 A. I believe that even if everything that
24 Officer Ternand said happened with regard to

1 the turning, the reaching happened, that it was
2 also unreasonable under the totality of the
3 circumstances for him to use deadly force under
4 those -- under the situation presented, excuse
5 me.

6 Q. And why is that?

7 A. Again, he made decisions that placed
8 himself in a situation. He made the decision
9 to jump the fence and end up in that backyard
10 alone. And based on the fact that there was
11 over 50 feet between them, and most primarily,
12 most significantly there was a tree right next
13 to him, there were other actions that could
14 have been taken that would have kept him safe
15 and kept the suspect alive.

16 Q. You mentioned there were 50 feet
17 between them. Why is that significant?

18 A. Because distance is always critical
19 and important and keeps officers safe.

20 It's, again, universally taught,
21 that when you are involved with an armed
22 suspect, it's important to keep distance and
23 not close distance.

24 We would have a different

1 scenario if Officer Ternand was in that same
2 backyard and four five feet from the suspect.
3 That's not what we have here.

4 Q. In conclusion, Mr. Gennaco, what is
5 your opinion in this matter?

6 A. As I earlier stated, my opinion is
7 that it was under the Graham versus Connor
8 standard and under the policy in existence at
9 the time as set out by the general order, that
10 the decision to use deadly force is not
11 justified and is in violation of the general
12 order.

13 MR. FIEWEGER: Thank you, sir.

14 HEARING OFFICER WOOD: Cross?

15 MR. THOMPSON: Your Honor, can we have a
16 minute? If I can respectfully like to see
17 Mr. Gennaco's notes.

18 HEARING OFFICER WOOD: Response to that?

19 MR. FIEWEGER: I would only caution don't
20 show him the notes if there's anything
21 reflecting our conversations.

22 THE WITNESS: There is not.

23 HEARING OFFICER WOOD: We'll take a
24 five-minute break.

1 (Recess.)

2 HEARING OFFICER WOOD: And we are back on
3 the record for the charges against Police
4 Officer Brandon Ternand, case number 17 BP
5 2940. And Respondent's counsel is going to
6 proceed with cross-examination of the expert.

7 MR. THOMPSON: Thank you. May I proceed?

8 HEARING OFFICER WOOD: Yes.

9 CROSS-EXAMINATION

10 BY MR. THOMPSON:

11 Q. Good morning, Mr. Gennaco. Am I
12 saying that correctly?

13 A. You are.

14 Q. My name is Jim Thompson, and I'd like
15 to ask you some questions today. Okay?

16 A. Of course.

17 Q. Just like to get a feel for some
18 general personal background here relative to
19 you. Is that okay?

20 A. Yes.

21 Q. Just some simple questions,
22 Mr. Gennaco. Where were you born?

23 A. Oak Harbor, Washington.

24 Q. And where do you live presently?

1 A. Playa del Rey, California.

2 Q. How long have you lived there,

3 Mr. Gennaco?

4 A. 20 years.

5 Q. Do you have any military training?

6 A. No.

7 Q. Have you served as a law enforcement
8 officer?

9 A. No.

10 Q. Have you ever been to any law
11 enforcement academy?

12 A. Yes.

13 Q. Have you ever been a cadet in any law
14 enforcement academy?

15 A. No.

16 Q. Do you own a firearm?

17 A. No.

18 Q. Have you been to Chicago before?

19 A. Yes.

20 Q. What's the longest continuous period
21 of time that you've been in Chicago?

22 A. Probably about two weeks.

23 Q. Do you have any family that resides in
24 Chicago?

1 A. Yes.

2 Q. Do you come out here to see them
3 regularly?

4 A. When I can.

5 Q. Who is that? Is that a brother,
6 sister?

7 A. It's a niece.

8 Q. A niece. Okay. When you come out to
9 visit your niece, do you ever discuss current
10 events in Chicago?

11 A. Yes.

12 Q. Does your niece discuss with you
13 current problems in the City of Chicago?

14 A. No.

15 Q. Do you follow Chicago news at all?

16 A. Not regularly.

17 Q. As it relates to your expertise in the
18 field of policing, do you follow the news out
19 of Chicago at all relative to guns and gun
20 violence?

21 A. I see media reports, yes.

22 Q. Would you agree that the largest, most
23 serious problem facing citizens in the City of
24 Chicago is gun and gun violence?

1 MR. FIEWEGER: Objection. Foundation.

2 MR. THOMPSON: I'm asking if he knows.

3 HEARING OFFICER WOOD: What's the
4 foundation? What's the relevance?

5 MR. THOMPSON: Totality of the
6 circumstances.

7 HEARING OFFICER WOOD: Read the question
8 again.

9 (Said question was read
10 back.)

11 HEARING OFFICER WOOD: What's the
12 foundation for that?

13 MR. THOMPSON: News.

14 HEARING OFFICER WOOD: The largest gun
15 problem? That's your characterization, isn't
16 it? You are characterizing it that way.

17 MR. THOMPSON: Okay. I can -- I'll
18 rephrase the question.

19 HEARING OFFICER WOOD: Thank you.

20 BY MR. THOMPSON:

21 Q. Is gun and gun violence the largest
22 criminal problem in the City of Chicago?

23 MR. FIEWEGER: Objection. Foundation.

24 HEARING OFFICER WOOD: You still have -- I

1 don't know how he can answer that.

2 MR. THOMPSON: All right.

3 BY MR. THOMPSON:

4 Q. Let me try it this way, Mr. Gennaco.

5 Are you familiar with any of the major criminal
6 problems in the City of Chicago?

7 A. Only from the reports.

8 Q. Okay. And from your media reports,
9 what are the large criminal problems presented
10 in the City of Chicago?

11 A. They're based on media reports, until
12 recently, I think there's been a downturn, but
13 homicides, concerns about the Chicago Police
14 Department, concerns about crime in general.

15 Q. Well, let's be a little more specific.
16 Does crime in general, is that really talking
17 about guns and gun violence?

18 A. Not exclusively.

19 Q. Okay. Have you ever watched Chicago
20 news when you haven't witnessed comments about
21 murders, gun violence in Chicago?

22 MR. FIEWEGER: Objection. Relevance.

23 HEARING OFFICER WOOD: Sustained.

24 BY MR. THOMPSON:

1 Q. What's the purpose of you watching
2 news in the City of Chicago?

3 MR. FIEWEGER: Objection. Relevance.

4 HEARING OFFICER WOOD: Sustained.

5 BY MR. THOMPSON:

6 Q. You were retained by the City of
7 Chicago in this matter to provide opinions,
8 correct?

9 A. Yes.

10 Q. When were you retained?

11 A. I'm not sure of the exact date, but I
12 would say two or three months ago.

13 Q. And when you were retained by the City
14 of Chicago, did you provide them with a
15 customary retainer and customary fee rates?

16 A. Within the range, yes.

17 Q. And the retainer and the fee rates
18 that you expressed, those are fee rates and
19 compensation you expected to receive for the
20 time that you spent reviewing this matter,
21 correct?

22 A. Yes.

23 Q. What is your standard retainer for a
24 matter like this involving excessive force?

1 A. I don't have a retainer. I bill by an
2 hourly rate.

3 Q. What's your hourly rate?

4 A. It's -- depends on the project, but
5 for this project, it's either 200 or 225 an
6 hour. I'm not sure exactly what it is.

7 Q. Do you charge an hourly rate that's
8 higher for other types of projects?

9 A. Sometimes.

10 Q. Did you charge a lower rate in this
11 matter because it was a municipality that was
12 requesting your services?

13 A. No.

14 Q. After you're done testifying today,
15 what's the total cost to the City of Chicago
16 for your services in this matter?

17 A. I don't know.

18 Q. Why don't you know?

19 A. Because I haven't calculated the
20 hours. Haven't prepared an invoice.

21 Q. Okay. Give us a ballpark. Your best
22 guess.

23 A. I know I committed to no more than
24 total, including travel, \$25,000.

1 Q. How much have you received to date?

2 A. Zero.

3 Q. So you're actually not going to be
4 paid by the City of Chicago until after you
5 complete your testimony here today?

6 A. I haven't taken the time to prepare an
7 invoice.

8 Q. As a result of your agreement to
9 provide testimony in this matter, Mr. Gennaco,
10 were you promised any future work by the City
11 of Chicago?

12 A. No.

13 Q. Was it implied to you that if you
14 testified here today, that you would receive
15 future work?

16 A. No.

17 Q. Now, when the City of Chicago
18 contacted you and asked you to provide
19 professional services in this matter, what
20 specifically did they ask you to do?

21 A. Initially?

22 Q. Initially.

23 A. We'd like you to look at the summary
24 of the investigation, as well as the

1 Superintendent's response, then the rebuttal to
2 the police review board and tell us what you
3 think.

4 MR. THOMPSON: May I approach, your Honor,
5 with his report?

6 HEARING OFFICER WOOD: Okay.

7 BY MR. THOMPSON:

8 Q. Mr. Gennaco, I'm going to show you
9 what I've marked as Exhibit 46. Do you
10 recognize that document?

11 (WHEREUPON, said
12 document was marked as
13 Respondent Exhibit No.
14 46 for Identification.)

15 A. I do.

16 Q. Okay. What is that document?

17 A. This document is a report that I
18 prepared in preparation for this hearing.

19 Q. And what's contained in that exhibit
20 is the basis for the opinions that you provided
21 here today, correct?

22 A. In part.

23 Q. With respect to this report,
24 Mr. Gennaco, you provided a list of the

1 materials that you received, you reviewed and
2 you relied upon, correct?

3 A. Yes, sir.

4 Q. And this report was prepared prior to
5 you -- your visit yesterday at the location of
6 the incident, correct?

7 A. Yes.

8 Q. And this report was provided prior to
9 any contact with training personnel at the
10 Chicago Police Department, correct?

11 A. Yes.

12 Q. You testified earlier that typically
13 you don't do any additional investigation other
14 than receive the completed investigation from
15 the department or the agency that's asking you
16 to review the matter, correct?

17 A. With regard to factual issues, that is
18 correct.

19 Q. But in this particular case, you did
20 decide that you were going to do some
21 independent investigation, correct?

22 A. No.

23 Q. Well, was the purpose of going out to
24 the location of the incident yesterday an

1 effort to contribute to your report?

2 A. It was an effort to view the scene.

3 Q. Okay. And viewing the scene is part
4 of what's contained in your report of Exhibit
5 46, correct?

6 MR. FIEWEGER: Objection. Foundation. The
7 report was prepared. He visited it. It can't
8 be in the report.

9 MR. THOMPSON: I'll rephrase the question.

10 HEARING OFFICER WOOD: Okay.

11 BY MR. THOMPSON:

12 Q. In your report, you made certain
13 findings relative to the area where this
14 pursuit occurred, correct?

15 A. Yes.

16 Q. And so going back to my question, you
17 went out after this report was prepared to
18 verify the information that's contained in
19 Exhibit 46 relative to the area that this
20 incident occurred, correct?

21 A. No.

22 Q. Okay. What's the purpose, then,
23 Mr. Gennaco of going out to see the crime
24 scene?

1 A. Purpose was I wanted to see it, feel
2 it, touch it, not taste it, but I wanted to
3 sense it. I wanted to get a sense for what the
4 dimensions were. What it looked like. I
5 wanted to the degree possible put myself in the
6 shoes of Mr. Bright or the officers, to get a
7 sense of distance that photographs can never do
8 significant justice to.

9 Q. Okay. And you don't consider going
10 out to review the area where this incident
11 occurred as part of your investigation?

12 A. No.

13 Q. All right. When you went out there
14 yesterday, did you go by yourself?

15 A. No.

16 Q. Were you accompanied by people?

17 A. Yes.

18 Q. Who accompanied you?

19 A. Mr. Fieweger and an officer with the
20 Chicago Police Department whose first name is
21 Dave.

22 Q. Why did an officer from the Chicago
23 Police Department join you in your examination
24 of the area of this incident?

1 MR. FIEWEGER: Objection. Relevance.

2 HEARING OFFICER WOOD: Why is it relevant?

3 MR. THOMPSON: Totality of the
4 circumstances. The area --

5 HEARING OFFICER WOOD: The totality of the
6 circumstances is focused to the event, to the
7 day of the shooting.

8 MR. THOMPSON: And the area where the
9 shooting occurred and the reason why
10 Mr. Gennaco was accompanied by an armed
11 individual is because that area is a --

12 HEARING OFFICER WOOD: You are speculating.

13 MR. THOMPSON: I was going to ask him why.

14 HEARING OFFICER WOOD: And you are leading.
15 I'm not sure where you're going with this,
16 because I'm not sure who accompanies him is
17 relevant to his opinion in the case.

18 MR. GRACE: Your Honor, the point
19 Mr. Thompson is trying to make here, this is
20 the 3rd District. This isn't Edgebrook, it
21 isn't Lincoln Park, isn't Beverly. This is a
22 dangerous area.

23 HEARING OFFICER WOOD: I understand the
24 point you are trying to make. I'm not sure you

1 can make it with this witness.

2 MR. GRACE: He felt -- sorry, Jim.

3 MR. THOMPSON: He's the expert that's --

4 HEARING OFFICER WOOD: You can ask him the
5 questions you want to ask him, but they still
6 have to be relevant.

7 MR. GRACE: Judge, the totality of the
8 circumstances is that the policeman that's
9 going to be used in the 3rd District in an area
10 that Mr. Gennaco needs to take an armed guard
11 with --

12 HEARING OFFICER WOOD: It is an argument
13 you can make, but you need to make sure your
14 questions solicit relevant testimony.

15 MR. THOMPSON: Okay.

16 BY MR. THOMPSON:

17 Q. When you went out to the area of the
18 incident in the 3rd District to get a feel, did
19 you get a feel that that area is an unsafe
20 area?

21 A. No.

22 Q. You did not?

23 A. No.

24 Q. Okay. Part of what you reviewed was

1 the report that Eddie Johnson, the
2 Superintendent of the Chicago Police
3 Department, prepared in this matter, correct?

4 A. He signed it, correct.

5 Q. Okay.

6 MR. FIEWEGER: I'm going to object.
7 There's some ambiguity to the question.
8 There's two documents that Superintendent
9 Johnson has signed that are in the file.
10 There's the TRR report that he signed off on,
11 and there's the non-concurrence letter that was
12 submitted to the Board member. So I just ask
13 for some clarification as to which document
14 Mr. Thompson is referring to.

15 MR. THOMPSON: All right.

16 BY MR. THOMPSON:

17 Q. Let's talk about the TRR report. Did
18 you review that?

19 A. Yes.

20 Q. And that was purported to be presented
21 by the Superintendent of the Chicago Police
22 Department, Eddie Johnson, correct?

23 A. I do not believe that was his title at
24 the time.

1 Q. Okay. It was from Eddie Johnson,
2 correct, the now Superintendent of the Chicago
3 Police Department?

4 A. That's my understanding, yes.

5 Q. Do you know how many years Eddie
6 Johnson has served as a Chicago police officer?

7 A. No.

8 Q. Are you familiar with now
9 Superintendent Eddie Johnson's service record
10 with the Chicago Police Department?

11 A. No.

12 Q. Do you know how many times over the
13 course of now Superintendent Eddie Johnson's
14 career he's been recognized for exceptional
15 service to the citizens of the City of Chicago?

16 MR. FIEWEGER: Objection. Relevance.

17 HEARING OFFICER WOOD: Absolutely. You
18 need to move on.

19 BY MR. THOMPSON:

20 Q. You disagreed with the findings of
21 Superintendent Eddie Johnson? Now
22 Superintendent Eddie Johnson.

23 A. Are you referring to the --

24 Q. TRR.

1 A. Correct.

2 Q. In fact, Eddie Johnson, the now
3 Superintendent of the Chicago Police
4 Department, found that Officer Brandon Ternand
5 was justified in the use of force, correct?

6 A. Again, with regard to which document,
7 sir?

8 Q. Either document.

9 A. Yes.

10 Q. All right. Referencing either
11 document, Mr. Gennaco, you understand that now
12 Superintendent Eddie Johnson asked that this
13 matter be reviewed by Sergeant Byrd from the
14 Chicago Police Department, correct?

15 MR. FIEWEGER: Objection. Relevance.

16 HEARING OFFICER WOOD: Sustained.

17 BY MR. THOMPSON:

18 Q. You agree, Mr. Gennaco, that you
19 reviewed both those documents, correct, the TRR
20 and the Superintendent's non-concurrence
21 letter, correct?

22 A. Correct.

23 Q. And in that letter or TRR, did
24 Superintendent Eddie Johnson reference Sergeant

1 Byrd and Sergeant Byrd's findings?

2 MR. FIEWEGER: Objection. Relevance.

3 HEARING OFFICER WOOD: Sustained.

4 MR. THOMPSON: It's the basis of his
5 opinion. That's a matter that he reviewed and
6 a document that he reviewed in preparing and
7 forming his opinions that he is expressing here
8 today.

9 HEARING OFFICER WOOD: He already said he
10 looked at those things. What else are you
11 trying to solicit here?

12 MR. THOMPSON: The content of what's
13 contained in the documents that he reviewed
14 that are the basis for his opinions today.

15 HEARING OFFICER WOOD: It just sounds like
16 you're trying to testify. You are bringing in
17 the content and then asking him if he saw it,
18 and he says, Yes, I saw it. So where does that
19 get you?

20 MR. THOMPSON: I'm confused, Madam Hearing
21 Officer.

22 HEARING OFFICER WOOD: I don't see the
23 relevancy of this line of questioning. Do you
24 have an actual question to ask him about his

1 opinions? About what did he think about the
2 content? All you're doing is testifying to
3 what these documents say.

4 MR. THOMPSON: First, I was trying to lay
5 the foundation that he had reviewed Sergeant
6 Byrd's opinions, what were Sergeant Byrd's
7 opinions, and did he disagree with Sergeant
8 Byrd's opinions.

9 HEARING OFFICER WOOD: And he's answered
10 that.

11 MR. THOMPSON: We were just at Sergeant
12 Byrd. I don't think he answered any of those
13 questions.

14 HEARING OFFICER WOOD: I am going to give
15 you a little bit more room. I'm trying to keep
16 you relevant here.

17 MR. THOMPSON: Okay.

18 BY MR. THOMPSON:

19 Q. You reviewed Sergeant Byrd's findings
20 relative to his review of the use of force by
21 Brandon Ternand in this matter, correct?

22 A. I reviewed a document referencing
23 Sergeant Byrd and his conclusions.

24 Q. Fine. You don't know Sergeant Byrd,

1 do you?

2 A. No.

3 Q. In the course of doing some type
4 of -- you didn't do any investigation relative
5 to Sergeant Byrd, correct? Who he was, how
6 long he's been on the job, anything, correct?

7 A. There's a reference in the document
8 about that.

9 Q. Okay. What was the reference?

10 A. I'd have to take a look at it to
11 refresh my memory.

12 Q. Well, in summary, the reference
13 relative to Sergeant Byrd is that he is a
14 veteran police officer with the Chicago Police
15 Department and a -- veteran sergeant of the
16 Chicago Police Department, correct?

17 A. That's my -- that's my recollection,
18 yes.

19 Q. And Sergeant Byrd came to the
20 conclusion that Officer Brandon Ternand used
21 justifiable force in this matter, correct?

22 A. That's what the document says.

23 Q. Did you review Officer Ternand's
24 service record in this matter?

1 A. I'm not sure what you mean by service
2 record.

3 Q. Let me narrow it down.

4 Did you review Officer Ternand's
5 complimentary history with the Chicago Police
6 Department?

7 A. There were references to that in
8 the -- in the Superintendent Johnson's
9 document.

10 Q. Do you agree that Officer Ternand is a
11 decorated Chicago police officer?

12 MR. FIEWEGER: Objection. Foundation.

13 HEARING OFFICER WOOD: What's the
14 foundation?

15 MR. THOMPSON: He said he reviewed it.

16 HEARING OFFICER WOOD: He said he saw it,
17 but you're asking him to draw a conclusion in
18 terms of whether he knows if the officer's been
19 decorated?

20 MR. THOMPSON: Correct.

21 BY MR. THOMPSON:

22 Q. From your review of Officer Ternand's
23 complimentary history with the Chicago police
24 Department, do you agree that Officer Ternand

1 is a decorated Chicago police officer?

2 A. I'm not sure I have enough information
3 to make that conclusion.

4 Q. Okay. You agree during the course of
5 your testimony today you were providing
6 opinions relative to Officer Ternand's
7 character, namely that he was lying about the
8 account of events, correct?

9 A. No.

10 Q. So you believe his account of events?

11 A. No.

12 Q. All right. In the course of reviewing
13 the complimentary history, was there any
14 reference that you reviewed to who provided or
15 who gave Mr. -- Officer Ternand those
16 decorations or commendations?

17 A. I'm not sure I understand the
18 question.

19 Q. Well, you agree that Officer Ternand
20 is a decorated Chicago police officer?

21 A. No, I don't have enough information to
22 make that conclusion.

23 Q. Was that important at all to you in
24 forming any of your opinions in this matter?

1 A. Not really.

2 Q. All right. In the course of your
3 review of this matter, did you review any
4 information relative to Officer Ternand's
5 disciplinary history?

6 A. No.

7 Q. All right. Can I direct your
8 attention to Exhibit 46?

9 A. Yes.

10 Q. On page one, you reference the
11 materials evidencing information considered at
12 the time of this -- relative to providing your
13 opinions in this matter, correct?

14 A. Yes.

15 Q. Now, you testified that you reviewed
16 certain studies, correct?

17 A. Reports.

18 Q. I think you used the word studies,
19 didn't you, Mr. Gennaco?

20 A. No, I think opposing counsel used the
21 word studies. It's more like a report.

22 Q. You didn't confirm that you reviewed
23 studies?

24 A. Better characterization are reports.

1 Q. So you didn't review any studies in
2 this particular matter, correct?

3 A. I think the better and accurate
4 depiction is reports. If you want to call them
5 studies, you can call them studies. Either
6 way, I think we're quibbling about terminology,
7 but it's a report or study.

8 Q. All right. Not really. But what you
9 reviewed in forming your opinions is contained
10 on page one and nothing else, correct?

11 A. No.

12 Q. Okay. It says materials, evidence and
13 information considered at the time you created
14 this report, correct?

15 A. Yes.

16 Q. And you provided a list, correct?

17 A. Yes.

18 Q. That was intended to be a complete
19 list, correct?

20 A. You're talking about the incident
21 itself? Absolutely a complete list, at the
22 time I completed the report.

23 My experience and my knowledge of
24 other articles or reports is not pertaining to

1 that particular incident.

2 Q. Okay. So, again, you didn't amend
3 this report at any time, correct?

4 A. No.

5 Q. And so the opinions that you express
6 in this report are based solely on the
7 materials in evidence and information that's
8 considered -- that you considered that's listed
9 on page one, correct?

10 A. No.

11 Q. Wasn't the purpose of identifying the
12 paragraph on page one entitled Materials and
13 Evidence and Information Considered was for the
14 purpose of letting anyone know who read this
15 report that this is what you relied upon?

16 A. With regard to the incident, at the
17 time I prepared the report, yes, sir.

18 Q. I guess what I'm saying is, did you
19 subsequently review some additional matters
20 that's not contained in the list on page one?

21 A. Yes.

22 Q. And did you ever amend that report?

23 A. No.

24 Q. And whatever you reviewed subsequently

1 came after you drafted this report, correct?

2 A. Yes.

3 Q. Can you turn to page four of your
4 report? You provided testimony relative to the
5 significance of Graham versus Connor, correct?

6 A. Yes.

7 Q. And you expressed your understanding
8 in the last full paragraph as to the
9 significance of Graham versus Connor, correct?

10 A. Yes.

11 Q. And it's fair to say that you believe
12 that in determining police used excessive force
13 under the 4th Amendment, the relevant inquiry
14 is whether the officer's actions were
15 objectively reasonable in light of the totality
16 of the circumstances, correct?

17 A. Yes.

18 Q. And when you review or consider what's
19 objectively reasonable, there's three things
20 that you consider, right? Severity of the
21 crime at issue?

22 A. Correct.

23 Q. Whether the suspect poses immediate
24 threat to the safety of the officers or others,

1 correct?

2 A. Yes.

3 Q. And whether the person is actively
4 resisting arrest or attempting to evade arrest
5 by flight, correct?

6 A. Yes.

7 Q. So one of the issues that you've
8 considered in forming your opinion today, or in
9 this report, is the severity of the crime,
10 correct?

11 A. Yes.

12 Q. Did you consider the severity of the
13 crime?

14 A. Yes.

15 Q. In considering the severity of the
16 crime, Mr. Gennaco, did you consider how the
17 citizens of Chicago perceive gun and gun
18 violence?

19 MR. FIEWEGER: Objection. Relevance.

20 HEARING OFFICER WOOD: Sustained.

21 BY MR. THOMPSON:

22 Q. Did you consider how the Chicago
23 Police Department considers the severity of gun
24 violence and guns in the City of Chicago?

1 A. No. I considered the statutes.

2 Q. All right.

3 A. In Illinois.

4 Q. Graham V Connor doesn't limit severity
5 of crime to statutes alone, does it?

6 A. I don't know.

7 Q. Well, you're an expert, Mr. Gennaco.
8 Does it or doesn't it?

9 A. I think it's the statutes that are
10 predominant.

11 Q. All right. But you don't know for
12 sure, right? Is that what your opinion is?

13 A. My analysis, and every expert that I
14 know of, analyzes the severity of the crime
15 based on the statutes that would be available
16 as a prosecutor prosecuting the individual
17 being apprehended.

18 Q. All right. You would agree that the
19 Chicago Police Department dedicates a portion
20 of their manpower every single day for the
21 single and sole purpose of attacking gun and
22 gun violence in the City of Chicago, correct?

23 MR. FIEWEGER: Objection. Foundation.

24 HEARING OFFICER WOOD: I'm not even

1 understanding why that question is relevant.

2 Where are you going?

3 MR. THOMPSON: The crime of gun and gun
4 violence is so significant to the Chicago
5 Police Department, that they dedicate a portion
6 of their manpower for the sole purpose of
7 addressing gun and gun violence in the City of
8 Chicago.

9 HEARING OFFICER WOOD: Where's the
10 foundation for that?

11 MR. THOMPSON: I'm asking if he knows that.

12 HEARING OFFICER WOOD: But there is no
13 foundation for what you're saying.

14 MR. THOMPSON: What do you mean? We've had
15 Officer Ternand, Officer Bruno, Officer Razo
16 come in.

17 HEARING OFFICER WOOD: Who talked about the
18 elements in the 3rd District. That's what they
19 talked about. The level of crime in the
20 district, not the whole City of Chicago.

21 MR. THOMPSON: Okay. I'll limit it to the
22 3rd District.

23 HEARING OFFICER WOOD: So you're asking him
24 if he knows the crime rates in the 3rd

1 District?

2 MR. THOMPSON: I'm asking him that because
3 that is a portion of what is meant by the
4 serious nature of the crime as expressed in
5 Graham V Connor that he introduced here today.

6 HEARING OFFICER WOOD: But he already
7 testified that he looks at the statute. He
8 answered your question. You want to argue with
9 him and tell him that he should be doing
10 something else, but he answered your question.

11 MR. THOMPSON: All right.

12 BY MR. THOMPSON:

13 Q. So I don't aggravate the Hearing
14 Officer any further, would it be fair to say,
15 Mr. Gennaco, that you have no knowledge how the
16 Chicago Police Department attacks gun and gun
17 violence in the 3rd District?

18 A. That's a fair statement.

19 Q. Would it be fair to say, Mr. Gennaco,
20 that you have no knowledge with respect to the
21 statistical data of violent crimes,
22 specifically guns, gun violence, murders,
23 shootings in the 3rd District where this
24 incident happened?

1 A. That also is accurate.

2 Q. So in forming your opinions today, you
3 did not -- or in your report you never
4 considered those two issues, right, how the
5 Chicago Police Department addresses gun and gun
6 violence in the 3rd District, and you never
7 considered the level of violence and gun
8 violence in the 3rd District where this
9 incident happened; is that fair?

10 A. If I could break the two questions
11 down, the answer to the first is, I did not
12 consider the first, because I did not have any
13 awareness.

14 The second, I did consider the
15 fact that based on the testimony of witnesses
16 in the investigation, that they testified that
17 this area had a higher level of violence than
18 maybe some of the other neighborhoods in
19 Chicago.

20 Q. Nothing with brass tacks with respect
21 to numbers or the data, but just a general
22 summary of the level of violence; is that fair?

23 A. I read the accounts of the involved
24 officers, and I took their accounts at face

1 value and considered it.

2 Q. And you considered that it was a very
3 high level of violent crimes in the 3rd
4 District in 2012?

5 A. I wouldn't put it very high crime. My
6 understanding, based on the officers'
7 statements, have no reason to discredit them in
8 regard to this point, is that it was a higher
9 crime area than other parts of Chicago.

10 Q. Well, in your course of your
11 experience as a prosecutor and reviewing
12 police-involved shootings, do you review data
13 relative to violent crimes?

14 A. Depends on the project and the purpose
15 of my review.

16 Q. Have you done it in the past?

17 A. Depends on the project, yes.

18 Q. If in 2012 in the 3rd District in the
19 City of Chicago there were 6,599 violent crimes
20 in one year, would you consider that to be
21 high?

22 A. That number doesn't mean anything to
23 me. Compared to what? I would need to know
24 more. I would need to know context of the

1 numbers. I would need to know how it compares
2 to the rest of the City. That number in and of
3 itself means almost nothing.

4 Q. Okay. Well, does 42 homicides in 2012
5 in the 3rd District, is that a high level?

6 MR. FIEWEGER: Objection. Relevance.

7 HEARING OFFICER WOOD: I think it's the
8 same problem. It has no context.

9 MR. THOMPSON: All right.

10 BY MR. THOMPSON:

11 Q. Mr. Gennaco, when considering a high
12 violent crime area, what do you take into
13 consideration?

14 A. Kind of depends -- does depend on the
15 project. And, again, I have no disagreement
16 with you about the supposition that the area in
17 which this -- address in which this incident
18 occurred is within an area that has high crime.

19 Q. It's really more than that that I'm
20 asking you, Mr. Gennaco. It's not high crime,
21 it's high violent crime.

22 A. I'll even accept that, too.

23 Q. Okay. So let's talk about statutes as
24 it relates to the severity of a crime. Okay?

1 Are we on the same page about this?

2 A. Yes.

3 Q. So in considering the severity of the
4 crime, you look to the Illinois compiled
5 statutes relative to firearms; is that fair?

6 A. In part.

7 Q. And you would agree that in 2012,
8 there was no law relative to conceal and carry,
9 correct?

10 A. I'm not sure I understand the
11 question.

12 Q. Was there a conceal and carry law in
13 the State of Illinois in 2012 that let any
14 person conceal and carry a weapon other than
15 law enforcement?

16 A. That's my understanding.

17 Q. In this particular matter, when
18 Officer Ternand and Officer Razo see Dakota
19 Bright brandishing a firearm, that's a crime,
20 correct?

21 A. I'm not sure the facts suggest
22 brandishing.

23 Q. Okay. When Officer Ternand and
24 Officer Razo observed Dakota Bright in the

1 mouth of the alley with a firearm not concealed
2 in his hand, he was committing a crime,
3 correct?

4 A. It depends on whether he would have
5 been considered an adult. Or tried as an
6 adult.

7 Q. Okay. He was committing a crime as a
8 juvenile?

9 A. Juveniles are not considered -- it's
10 not considered a crime if you proceed against
11 an individual as a juvenile, juvenile
12 adjudication, the status of the offender has a
13 lot to do with whether it's a, quote, crime.

14 Q. Are you suggesting that a juvenile
15 with a firearm in his hand, not concealed, in
16 the City of Chicago in 2012 is not committing a
17 crime?

18 A. I'm suggesting it's a juvenile
19 offense, which is not considered an adult
20 crime.

21 Q. All right. Let's talk about an adult
22 first. Okay? What distinguishes an adult from
23 a juvenile in the State of Illinois in 2012?

24 A. In part it's dependent on what the

1 prosecutor decides to do and how the prosecutor
2 intends to go forward on the case. But,
3 generally speaking, with some exceptions, and
4 in some cases prosecutors have discretion to
5 charge an individual who is a juvenile as an
6 adult, but that's not usually done.

7 Q. Okay. It's age, right?

8 A. Age.

9 Q. Age 18, correct?

10 A. That's right.

11 Q. So if you're 18 years or older in
12 2012, and you're carrying a firearm in your
13 right hand, and it's not concealed, what class
14 offense is that in 2012 in the State of
15 Illinois?

16 A. It's at least a Class A misdemeanor if
17 you are an adult.

18 Q. It is a Class 4 felony, correct?

19 A. It can be.

20 Q. Let's talk about a Class A
21 misdemeanor. That only applies to a person
22 having a firearm in their home or their place
23 of business and not having a FOID card,
24 correct?

1 A. The card is important, yes, sir.

2 Q. Do you agree that it's only a Class A
3 misdemeanor if you are possessing that firearm
4 in your home or in your place of business?

5 A. That's correct.

6 Q. All right. Well, we know from the
7 facts of this case that Dakota Bright wasn't in
8 his home or in his place of business at the
9 time that he was in the alley with a firearm in
10 his right hand, correct?

11 A. We also know he wasn't an adult.

12 Q. No, we don't. We don't know -- okay.
13 Mr. Gennaco, you didn't read anything in this
14 report that stated that Officer Ternand and
15 Officer Razo knew the age of Dakota Bright when
16 they saw him in the alley; is that true? Yes
17 or no?

18 A. Could you rephrase the question, sir?

19 Q. There's nothing that you reviewed in
20 this case that any of the officers knew the age
21 of Dakota Bright at the time that they observed
22 him in the alley brand -- carrying a firearm
23 not concealed; is that fair?

24 A. That is correct, sir.

1 Q. So 18 years or older, not in your home
2 or your abode, it's a Class 4 felony in the
3 State of Illinois, correct?

4 A. My understanding it's a Class 3 felony
5 or Class A misdemeanor. That's my
6 understanding.

7 Q. Okay. Did you know, Mr. Gennaco, that
8 possessing a firearm, whether you want to call
9 it a Class 3 felony or a Class 4 felony in the
10 State of Illinois in 2012 was nonprobationable?

11 A. I don't know that.

12 Q. Did you know -- did you know of all of
13 the Class 4 felonies in the State of Illinois
14 in 2012, the only nonprobationable felony
15 carved out by the legislature was a UUW?

16 A. No.

17 Q. You weren't aware of that?

18 A. No.

19 Q. It's important to know that
20 information, right, Mr. Gennaco? Because you
21 are evaluating the severity of the crime, and
22 you testified that it's the statutes that
23 control, and you are unaware of the statutes;
24 is that fair?

1 A. No, it's not fair.

2 Q. Let's talk about the class of crime if
3 the 18 year old or older adult is possessing a
4 firearm, and they're a convicted felon. What
5 class is that?

6 A. I have no idea.

7 Q. Would you believe me if I said that
8 was a Class 2 felony?

9 A. No.

10 Q. Would you believe me if I told you
11 that that was nonprobationable?

12 A. No.

13 Q. Would you believe me if I told you
14 that the minimum sentence is three to seven
15 years on a Class 2 felony, UUW by a felon?

16 A. No.

17 Q. Do you agree, Mr. Gennaco, that the
18 firearm recovered in this incident was loaded?

19 A. Based on the report, yes.

20 Q. Well, right, based upon the report,
21 the firearm that was recovered in this matter
22 was loaded, correct?

23 A. Based on the report, yes, sir.

24 Q. And in your review of the criminal

1 statutes, there's a whole section in the
2 criminal code relative to ammunition. Are you
3 aware of that?

4 A. Not specifically.

5 Q. Are you aware of the difference
6 between a person possessing a firearm that's
7 not loaded versus a person that's possessing a
8 firearm that's loaded under the criminal code?

9 A. Generally it's a more severe offense
10 if the firearm is loaded.

11 Q. Would it be fair to say, Mr. Gennaco,
12 you didn't exhaustively review the criminal
13 statutes in Illinois relative to the severity
14 of the crime of possessing a firearm loaded in
15 public in 2012?

16 A. I did research, and I came to the
17 conclusion it was not a forcible felony, and
18 concluded what the class was for the offense.

19 Q. In preparing your opinions,
20 Mr. Gennaco, did you review the deadly force
21 statutes in the State of Illinois in 2012, 720
22 ILCS 5/2-8?

23 A. My focus was on the general order.

24 Q. Okay. So is that a no?

1 A. No, it's not a no. My focus was on
2 the general order.

3 Q. All right.

4 THE VIDEOGRAPHER: We're now off the
5 record. Just have to change disks.

6 (Brief pause.)

7 HEARING OFFICER WOOD: Back on the record.
8 Continue with your cross.

9 BY MR. THOMPSON:

10 Q. So, Mr. Gennaco, you're familiar with
11 the forcible felony statute in the State of
12 Illinois in 2012?

13 A. I have reviewed it, yes.

14 Q. Are you conversant on the forcible
15 felony statute?

16 A. I'm conversant to the degree I
17 evaluated the crime that may have been
18 committed in this case.

19 Q. Okay. So you agree then that a
20 forcible felony as defined in the statute
21 provides a list, including in that list that
22 any other felony which involves the use of or
23 threat of physical force or violence against
24 any individual is a forcible felony; is that

1 true?

2 A. As defined in the general order.

3 Q. Okay. Is that also defined in the
4 Illinois statute?

5 A. I focused on the general order. You'd
6 have to show me the statute. I don't know
7 anything about that.

8 Q. The next prong of the test in
9 considering objective reasonableness is whether
10 the suspect poses an immediate threat to the
11 safety of the officers or others, correct?

12 A. Yes.

13 Q. All right. So certainly when Dakota
14 Bright is in the general public, walking or
15 creeping down an alley, he poses an immediate
16 threat to any person that's in the area,
17 correct?

18 MR. FIEWEGER: Object to the
19 characterization of creeping. No testimony he
20 was creeping.

21 MR. THOMPSON: Okay. Fine. I'll rephrase
22 the question.

23 HEARING OFFICER WOOD: Thank you.

24 BY MR. THOMPSON:

1 Q. Mr. Gennaco, a person, in this case
2 Dakota Bright, walking down a sidewalk and into
3 an alley poses -- with a handgun, poses an
4 immediate threat to any pedestrian or person in
5 the immediate area, correct?

6 A. Not correct.

7 Q. Okay. A person walking down the
8 sidewalk as Dakota Bright was poses an
9 immediate threat to any motorist in the area,
10 correct?

11 A. Not correct.

12 Q. Let's talk about the officers. When
13 the officers see Dakota Bright in the alley
14 standing in front of their approaching vehicle
15 with a firearm in his right hand, he poses an
16 immediate threat to those officers, doesn't he?

17 A. He does not.

18 Q. If Dakota Bright fired that weapon at
19 the officers, they could be struck or injured,
20 correct?

21 A. Yes.

22 Q. And there was nothing preventing
23 Dakota Bright from doing such a thing at the
24 time that the officers encountered him, was

1 there?

2 A. He could have done that, and
3 that's assuming that he was armed.

4 Q. And you agree that the last prong in
5 that test under Graham V Connor is whether or
6 not in this instance Dakota Bright was actively
7 resisting arrest or attempting to evade arrest
8 by flight, correct?

9 A. That's correct.

10 Q. Well, that's undisputed in this
11 instance, that, in fact, that's exactly what
12 Dakota Bright was doing, right?

13 A. I agree with that.

14 Q. Graham V Connor also requires that you
15 take into consideration the totality of the
16 circumstances; is that fair?

17 A. Exactly, correct.

18 Q. And when you were considering these
19 facts as it applies to the standards set forth
20 in Graham V Connor, and I'm going to list some
21 things, just let me know if you took those into
22 consideration, okay?

23 Did you take into consideration
24 the level of violent crime in the 3rd District

1 in this particular area at the time of the
2 occurrence?

3 A. I took into consideration the
4 statements of the officers indicating it was a
5 high-crime area.

6 Q. Is that yes?

7 A. No, it's not yes.

8 Q. Did you take into consideration the
9 level of gang violence and activity in the 3rd
10 District in the specific area at the time of
11 this particular occurrence?

12 A. I took into consideration the
13 information about potential gangs and gang
14 violence as indicated in the report that was
15 prepared by the Chicago Police Department and
16 IPRA.

17 Q. Did you take into consideration that
18 this individual, Dakota Bright, was carrying a
19 firearm in broad daylight?

20 A. I took into consideration the belief
21 by the officers that Dakota Bright may have
22 been carrying a firearm in the daytime.

23 Q. Let's go with yes or no, so I can get
24 through these a little faster.

1 A. I'm sorry. I can't answer yes or no
2 if I can't --

3 Q. Fair enough. Did you take into
4 consideration the fact that Dakota Bright was
5 not making any effort to conceal the weapon
6 prior to encountering the officers?

7 A. I'm not sure those facts were in
8 evidence, so I'm not sure I can answer that
9 question.

10 Q. Well, we agree that Dakota Bright was
11 observed by the officers standing in the mouth
12 of the alley in broad daylight and not making
13 any effort until the officers saw him to
14 conceal that firearm, correct?

15 A. That's fair.

16 Q. Did you take that into consideration?

17 A. I did.

18 Q. Did you take into consideration the
19 experience of Officer Razo and Officer Ternand
20 when they observed Dakota Bright in the alley
21 with his firearm in his right hand?

22 A. I'm not sure I understand what you
23 mean by experience.

24 Q. Well, in the course of your

1 investigation, did you have any understanding
2 with respect to the level of experience that
3 Officer Ternand had as a tactical officer in
4 the 3rd District at the time of this
5 occurrence?

6 A. Yes.

7 Q. Did you take into consideration the
8 possibility or probability that Dakota Bright
9 was intending to commit a crime with his
10 firearm?

11 A. If you're asking about the
12 possibility, yes.

13 Q. All right. Can I ask you to direct
14 your attention to page seven of your report?

15 A. I have it.

16 Q. Your paragraph identified as one in
17 the middle.

18 A. Yes.

19 Q. And in that paragraph, you state that
20 Ternand shot and killed Dakota Bright because
21 he was getting away, correct?

22 A. I said that the evidence suggests or
23 indicates that.

24 Q. All right. If Dakota Bright was, in

1 fact, not getting away, but was being cornered
2 or trapped by the Chicago police officer's
3 tactics, and he was, in fact, closer to being
4 apprehended, would you agree that that would
5 have an effect on your opinion?

6 A. No.

7 Q. Under subparagraph -- under paragraph
8 one, paragraph A, you discussed the forensics
9 in this case, correct?

10 A. Yes.

11 Q. In the first comment that you make
12 relative to the forensics in this case, is
13 certainly the entrance of a bullet does not
14 determinatively proof that Dakota Bright was
15 facing away at the time Officer Ternand decided
16 to use deadly force --

17 A. Correct.

18 Q. -- is that correct?

19 A. Absolutely.

20 Q. Did you review any other forensic
21 information in this case relative to the bullet
22 fired by Officer Ternand?

23 A. I reviewed the information that was in
24 the file.

1 Q. Okay. Do you remember reviewing the
2 report from Joseph Thibault from the Illinois
3 State Police?

4 A. As I sit here today, no.

5 MR. THOMPSON: May I approach, your Honor?

6 HEARING OFFICER WOOD: Yes.

7 BY MR. THOMPSON:

8 Q. I'm going to show you what was
9 previously marked as Exhibit No. 18.

10 Have you had a chance to review
11 that document, Mr. Gennaco?

12 A. Yes.

13 Q. Did you review that document during
14 the course of your investigation of this
15 incident?

16 A. As I sit here today, I have no
17 independent recollection of doing that. If it
18 was in the file, I'm certain I did.

19 Q. And that report indicates that the
20 forensic lab with the Illinois State Police
21 believe that there's a possibility that the
22 shot fired by Officer Ternand struck some other
23 metal object prior to striking Dakota Bright,
24 correct?

1 A. That possibility is there.

2 Q. And you would agree, Mr. Gennaco, that
3 nowhere in your report do you reference
4 anything under your subsection of forensic
5 information that there's a possibility that the
6 round fired by Officer Ternand struck or
7 ricocheted off of an object prior to striking
8 Dakota Bright; is that fair?

9 A. Yes.

10 Q. If, in fact, Mr. Gennaco, that
11 analysis by the Illinois State Police is
12 accurate, wouldn't you agree that Officer
13 Ternand's discharged round that struck Dakota
14 Bright was lucky?

15 A. No.

16 Q. Are you suggesting that if you fire a
17 round and it ricochets off of something and
18 strikes your target, that that's a good shot?

19 A. I'm not suggesting there was a
20 ricochet.

21 Q. Here's what I'm saying to you,
22 Mr. Gennaco, is that the Illinois state lab did
23 a forensic analysis of the round fired by
24 Officer Ternand, and they found a discrepancy

1 in that round, namely they found a metallic
2 substance on that round, correct?

3 A. Correct.

4 Q. And based upon that, they opine that
5 it's possible that that round struck some metal
6 object prior to striking Dakota Bright,
7 correct?

8 A. No.

9 Q. You don't agree with that?

10 A. I don't agree with that.

11 Q. In the event, Mr. Gennaco, that
12 Officer Ternand's round did, in fact, strike or
13 ricochet off of an object prior to striking
14 Dakota Bright, would you agree that is a lucky
15 shot?

16 MR. FIEWEGER: Objection. Vague and
17 argumentative. I don't know what that means.

18 HEARING OFFICER WOOD: And asked and
19 answered.

20 BY MR. THOMPSON:

21 Q. If you are sighting up a weapon to
22 strike a target, you're not sighting that round
23 with the intention that it strike an object
24 before it strikes your target, are you?

1 A. Correct.

2 Q. Can I direct your attention,
3 Mr. Gennaco, to page eight.

4 A. Okay.

5 Q. We're talking on the section B, the
6 first paragraph, you indicate that Officer
7 Ternand was approximately 50 feet from Dakota
8 Bright when he fired his weapon, correct?

9 A. Yes.

10 Q. Would you agree, Mr. Gennaco, that at
11 the time Officer Ternand discharged his
12 firearm, he was closer to Dakota Bright than a
13 professional pitcher is to a batter?

14 MR. FIEWEGER: Objection. Foundation.

15 THE WITNESS: I'm not sure I know.

16 MR. THOMPSON: Okay.

17 BY MR. THOMPSON:

18 Q. Are you aware?

19 A. I should know, but I don't.

20 Q. Let me ask you, Mr. Gennaco, are you a
21 baseball fan?

22 A. I'm a baseball fan.

23 Q. Would you agree that the distance from
24 a pitcher to a batter is 60 feet, 6 inches?

1 A. I don't know.

2 Q. Okay. Do you consider the fence to be
3 a barrier, on page eight, correct?

4 A. Could you specify which fence you are
5 talking about?

6 Q. Sure. You indicate the six-foot
7 fence, that's a barrier, correct? You say
8 facing the barrier.

9 A. It is a barrier.

10 Q. Barriers are generally insurmountable;
11 wouldn't you agree?

12 A. No.

13 Q. Well, there was certainly nothing
14 based upon Officer Ternand's age and experience
15 that prevented him from traveling over a
16 six-foot fence, is there?

17 A. If you are talking about experience, I
18 would hope his officer safety considerations
19 would kick in there.

20 Q. We're not talking about that. We're
21 talking about his ability to go -- physically
22 go over a fence, a six-foot fence.

23 A. Are you retracting the bit about
24 experience?

1 Q. I'm asking the questions, Mr. Gennaco.

2 A. I'm trying to get a clarification.

3 Q. All right. One of the basis for you
4 believing that he was getting away was because
5 Officer Ternand was facing a barrier, correct?

6 A. There was at least one barrier between
7 him and the individual.

8 Q. And that's a fence; is that fair?

9 A. It was a fence.

10 Q. And you're not suggesting that Officer
11 Ternand was physically unable to climb over a
12 fence, are you?

13 A. No.

14 Q. You also indicated that Officer
15 Ternand was frustrated at the time that he
16 discharged his firearm; is that fair?

17 A. He may have been.

18 Q. Well, you don't say may have been, you
19 say he was.

20 A. I said the frustration of the moment.

21 Q. Okay. In your reports that you
22 reviewed and the information you reviewed in
23 this matter, Officer Ternand never said that he
24 was frustrated, did he?

1 A. No, he didn't.

2 Q. In fact, at the time that Officer
3 Ternand encountered the six-foot fence, Officer
4 Bruno was paralleling the offender, Dakota
5 Bright, in the alley, correct?

6 A. He was running in that direction, yes.

7 Q. And Officer Sledge was paralleling the
8 subject on Indiana in his vehicle, correct?

9 A. Depends on when -- what time you're
10 asking. Sometimes he was stationary in cars,
11 sometimes he was moving.

12 Q. When you considered using the word
13 frustration, did you take into consideration
14 the short distance of the foot pursuit by
15 Officer Ternand?

16 A. I did.

17 Q. Did you take into consideration the
18 short amount of time that Officer Ternand had
19 been involved in the foot pursuit?

20 A. I did.

21 Q. Did you take into consideration the
22 fact that the tactical officers, specifically
23 Officer Ternand, are involved daily in foot
24 pursuits similar to this?

1 A. I don't know that.

2 Q. Did you take into consideration the
3 fact that 3rd District tactical officers like
4 Officer Ternand encounter obstacles all the
5 time in foot pursuits?

6 A. I don't know that.

7 Q. Did you take into consideration that
8 Officer Ternand and the other officers in this
9 matter believed that based upon the tactics
10 that they were using, that they had Dakota
11 Bright in a box?

12 A. No.

13 Q. Did you believe -- did you take into
14 consideration the fact that the officers,
15 specifically Officer Ternand, believed that
16 Dakota Bright was trapped?

17 A. No.

18 Q. You used in relation to the Dakota
19 Bright getting away, the fact that you believed
20 that the exertion being expended by Officer
21 Ternand was contributing to Mr. Dakota Bright
22 getting away?

23 A. No.

24 Q. You believe that the exertion that

1 Officer Ternand was using in this pursuit was a
2 contributing factor to why he discharged a
3 round at Dakota Bright?

4 A. Yes.

5 Q. Did you take into consideration any of
6 the physical qualities of Officer Ternand
7 relative to whether he was exerted or not?

8 A. No.

9 Q. It was a generic expression?

10 A. Based on experience and studies.

11 Q. Again, are you referencing some
12 studies that you didn't mention in this exhibit
13 under materials in evidence and information
14 considered?

15 A. No. It's my experience watching
16 officers involved in hightail foot pursuits and
17 jumping over fences and seeing their level of
18 exertion afterwards.

19 Q. Is that on video or actually being out
20 there with them?

21 A. Being out there and actually doing it
22 myself.

23 Q. And when you reviewed the report,
24 Officer Ternand never said that he was tired,

1 winded or exerted, did you?

2 A. I'm not sure he was asked, but he did
3 not say that.

4 Q. Did you consider under subsection B
5 how many similar incidents, these foot
6 pursuits, Officer Ternand had been in
7 previously?

8 A. I considered one deadly force incident
9 that he had been involved in previously that he
10 testified to.

11 Q. But that's it, right?

12 A. That is my -- that was the basis for
13 my consideration, yes.

14 Q. So if Officer Ternand testified that
15 they are regularly involved in similar foot
16 pursuits on a daily basis, would that affect
17 your opinion?

18 A. No.

19 Q. Would it affect your opinion if the
20 3rd District officers, Bruno and Razo,
21 testified that the foot pursuit is a -- similar
22 to this, is a regular occurrence to them on a
23 daily basis, would that affect your opinion?

24 A. No.

1 MR. THOMPSON: Can we take a short break?

2 HEARING OFFICER WOOD: We can go off the
3 record for a second.

4 (Recess.)

5 MR. GRACE: Your Honor the last couple of
6 questions of cross I was going to take over the
7 cross and do the last remaining questions on
8 cross, if that's okay.

9 HEARING OFFICER WOOD: Any objection?

10 MR. FIEWEGER: No.

11 HEARING OFFICER WOOD: That's fine.

12 MR. GRACE: May I proceed?

13 HEARING OFFICER WOOD: You may proceed.

14 CROSS-EXAMINATION

15 BY MR. GRACE:

16 Q. So, Mr. Gennaco, as I understood your
17 direct examination, you had a problem with the
18 forensics of the case; is that right?

19 A. I don't know what you mean by --

20 Q. You testified on direct examination
21 that when you looked at the -- I think you have
22 it on -- it's on page seven, forensics evidence
23 shows the bullet strikes entered the back of
24 Dakota's head. And you found that problematic

1 with respect to the use of force used, right?

2 A. It was a factor that I considered.

3 Q. One of the factors you considered.

4 You considered that the fact that the bullet
5 entered the back of the head, which more than
6 likely says to you that his head would have
7 been turned away from Officer Ternand; is that
8 correct?

9 A. It was clear that at the time that the
10 bullet struck his head, he was away from
11 Ternand.

12 My testimony was that it was more
13 likely that the time -- based on the
14 description of the event at the time that
15 Officer Ternand used deadly force, he would
16 also have been facing away from Officer
17 Ternand.

18 Q. Okay. I also understand that you have
19 a problem with the rendition of facts of
20 Officer Ternand; is that correct?

21 A. I don't know what you mean by problem.

22 Q. You don't believe him? You think some
23 of the things he is saying either he actually
24 didn't see or possibly just made up; is that

1 right?

2 A. I do not believe his account matches
3 the physical and circumstantial evidence.

4 Q. Fair enough. What I'd like to do is
5 I'd like to ask you a series of questions
6 regarding Officer Ternand. And let's assume we
7 are going to take Officer Ternand's account as
8 true. Okay? In these next couple of
9 questions. All right?

10 A. Yes.

11 Q. Officer Ternand is going eastbound
12 down that alley as it approaches Indiana; is
13 that correct?

14 If you want to, you can look.
15 There's an exhibit in front of you that may
16 help you.

17 A. That is my understanding of his
18 account.

19 MR. FIEWEGER: I'm going to object. You
20 said eastbound.

21 BY MR. THOMPSON:

22 Q. Westbound down that alley; is that
23 right?

24 A. Yes.

1 Q. You can see the big three that's been
2 put on Exhibit No. 2 in that alley?

3 A. Yes.

4 Q. Let's assume that Officer Ternand's
5 vehicle is in that position, correct?

6 A. Yes.

7 MR. GRACE: Do you have that little --
8 amazing little clicker?

9 MS. WHALEY: Yes, we do.

10 BY MR. GRACE:

11 Q. I'm not going to hit you in the eye or
12 anything. All right?

13 So this number three right here,
14 here Ternand's car. Do you see that?

15 A. Yes.

16 Q. And pursuant to the testimony by
17 Sledge and Bruno, they are in the vehicle right
18 behind him, correct?

19 A. Are you talking about the information
20 in the report?

21 Q. Yes. Let's talk about the information
22 in the report. Because as you testified
23 before, the reports that you used, the four
24 corners of the report that we need to rely upon

1 is what you reviewed; is that right?

2 A. Yes.

3 Q. So then we got Dakota Bright here. We
4 don't need to be exact. He enters the mouth of
5 this alley, correct?

6 A. Yes.

7 Q. Remember, we're going to go under the
8 assumption that Officer Ternand is an alter
9 boy, and he has not told a lie about anything
10 that you reviewed. Okay?

11 A. Yes.

12 Q. You got me?

13 A. Yes.

14 Q. So Ternand then says he sees Dakota
15 Bright standing in this alley with a pistol in
16 his right hand, correct? That's what he says,
17 right?

18 A. Yes.

19 Q. And then we know that Dakota Bright
20 runs north on Indiana, correct?

21 A. Yes.

22 Q. Ternand speeds up, turns the corner.
23 By the way, Ternand is the passenger, correct?

24 A. That's right.

1 Q. And they broadcast over OEMC the 911
2 call over the zone, Man running north dressed
3 in red wearing" -- holding his left side; is
4 that right?

5 A. I believe his partner radioed that.

6 Q. That's right. And the partner says
7 this, and the OEMC operator responds back over
8 the zone, the same information to alert all
9 their people in the zone of what's going on,
10 right?

11 A. She indicates -- she instructs the
12 officers to be cautious.

13 Q. She uses the words be cautious. You
14 included in your report be cautious, they all
15 believed he had a gun, right? You put that in
16 your report?

17 A. They suspected he had a gun.

18 Q. That's right. Off he runs holding his
19 left side. Then he proceeds to go eastbound on
20 Marquette; is that right?

21 A. Yes.

22 Q. We know that Bruno and Sledge, they
23 sit tight here in the alley, right? Right
24 here. They remain right here, correct?

1 A. For some period of time.

2 Q. And when asked why's that, Bruno said
3 the tactic was they wanted to make sure Dakota
4 Bright didn't double back; is that right?

5 A. Yes.

6 Q. So that tactic, while unspoken and not
7 commute indicated to anybody at this point over
8 OEMC or push-to-talk or anything else, that was
9 a tactic being utilized by at least Bruno and
10 Sledge at that point, correct?

11 A. Yes.

12 Q. And somehow Ternand and Razo, who know
13 nothing -- who didn't communicate this, knew
14 that they were going to hang south; is that
15 right?

16 A. I'm not sure I understand.

17 Q. Well, Bruno and Razo, they go -- they
18 go eastbound on Marquette -- go eastbound on
19 Marquette and follow -- and stop right at the
20 mouth of this alley; is that right?

21 A. Yes.

22 Q. And at that point, isn't it true that
23 there's a OEMC -- sorry. Sorry to use that
24 nomenclature. A 911 or a dispatch call where

1 we can hear either Bruno or -- either Ternand
2 or Razo say he's coming back at you, Gino?

3 A. Yes.

4 Q. That's a tactic? They are telling
5 him, he is coming back your way, correct?

6 A. Not only is it a tactic, it is a good
7 tactic.

8 Q. Correct. But as I understood your
9 testimony on direct examination and under
10 cross, your problem was they weren't
11 communicating with each other, right?

12 A. After the foot pursuit began.

13 Q. But sometimes officers are able to
14 communicate with each other without even having
15 to talk to each other back and forth, correct?

16 A. Not very effectively.

17 Q. But they still do it, don't they?

18 A. Not very effectively.

19 Q. I tell you what, I bet you Seal Team 6
20 would think differently when they took bin
21 Laden down and didn't say a word; are you aware
22 of that?

23 MR. FIEWEGER: Objection. Argumentative.

24 HEARING OFFICER WOOD: Sustained.

1 MR. GRACE: Fair enough. Move on.

2 BY MR. GRACE:

3 Q. Anyway, Ternand stops. They stop the
4 vehicle, correct?

5 A. Yes.

6 Q. And according to Ternand -- again,
7 remember this line of questioning is going
8 under what is going through Brandon Ternand's
9 mind. He begins to pursue Dakota Bright south;
10 is that right?

11 A. On foot, yes.

12 Q. Now, Razo, he positions himself this
13 way and parallels Dakota Bright. Are you aware
14 of that?

15 A. That's my understanding.

16 Q. That could be considered a tactic,
17 could it not?

18 A. A bad one.

19 Q. Well, that's your opinion.

20 Now, the next -- by the way, you
21 said you went out to the scene yesterday; is
22 that right?

23 A. Yes.

24 Q. You identified Exhibit No. 5 and 6; is

1 that right?

2 A. Yes.

3 Q. I don't know how much time you spent
4 in Chicago, but this happened in October -- in
5 November of -- November. We don't have this
6 kind of foliage that's depicted on Exhibits 5
7 and 6. Do you realize that?

8 A. I sure do.

9 Q. Actually, when you try to go out
10 there, touch, feel and not taste the scene, you
11 couldn't very well because this shows a lot of
12 foliage, right?

13 A. It's not the same.

14 Q. Sure, it's not the same. Not the same
15 view that Officer Ternand had when he was
16 running down that alley; is that correct?

17 A. That's correct.

18 Q. Now we got Dakota Bright racing down
19 this alley. He jumps the first little chain
20 link fence, correct?

21 A. Yes.

22 Q. Then he jumps the guardrail, correct?

23 A. Yes.

24 Q. Then he goes fence, fence, fence,

1 correct?

2 A. Yes.

3 Q. According to Officer Ternand who is
4 following him, he's not changing, he's favoring
5 his left side and continues to pursue him; is
6 that correct?

7 A. Yes.

8 Q. And, in fact, he runs into Bruno right
9 here; is that right?

10 A. That's right.

11 Q. What's he tell Officer Bruno?

12 A. I believe he indicates that Bright is
13 armed.

14 Q. So we know right there, if we believe
15 Brandon Ternand at this point right here,
16 Brandon Ternand still believes that Dakota
17 Bright has that gun; is that right?

18 A. Correct.

19 Q. As they continue down. Brandon hits
20 the six-foot fence and Dakota Bright hits the
21 last fence; is that right?

22 A. I don't know what you mean by hit.

23 Q. I'm sorry. That's a good point.
24 Brandon gets to, arrives at, comes upon the

1 six-foot fence; is that right?

2 A. Yes.

3 Q. He doesn't scale the fence. That's
4 where he remains when he takes the shot, right?

5 A. Yes.

6 Q. We got Officer Bruno paralleling down
7 the alley; is that correct? That's what
8 Bruno's testimony was?

9 A. Yes.

10 Q. You were there yesterday. This point
11 right here in the middle of the yard where
12 Dakota Bright was and this point right here,
13 it's half a lot, correct? It's close?

14 A. Yes.

15 Q. So you got Dakota Bright right here.
16 He's got Ternand coming from the north. He's
17 got Razo somewhere over here, whether you knew
18 that or not I've give you, and we know we got
19 Sledge down here southwest to create what's
20 called a boxing movement, agreed?

21 A. No.

22 Q. They got him boxed in. He can't go
23 north. He can't go west. He can't go east.
24 And as you found out yesterday, there is no

1 where to go south, correct?

2 A. No.

3 Q. So let's go back to Brandon Ternand.

4 Brandon's running down and gets to that

5 six-foot fence. Dakota Bright jumps that

6 six-foot fence, and for the first time, Dakota

7 Bright's demeanor changes, according to

8 Brandon, correct? He stops, correct?

9 A. Yes.

10 Q. And Brandon says that Dakota Bright at

11 this point reaches forward with his right hand

12 to his left side; is that correct?

13 A. That's what he says.

14 Q. And the last time that Brandon Ternand

15 saw Dakota Bright, according to Brandon

16 Ternand, Dakota Bright saw him reaching to his

17 left side with his right hand was when he had a

18 pistol in his hand, correct?

19 Right over here, right on the

20 corner, right on the corner. Doesn't Brandon

21 Ternand testify in his deposition and two IPRA

22 statements and to the Chicago police officers

23 that he sees Dakota Bright enter the alley and

24 place the gun on his left side with his right

1 hand?

2 A. Yes.

3 Q. So now Dakota Bright stopped and
4 Brandon Ternand from his position sees Dakota
5 Bright go towards his left side with his right
6 hand. We agree upon that? That's what Ternand
7 says; is that right?

8 A. That's what he says.

9 Q. And you find that to be incredible
10 that Dakota Bright in that position would reach
11 for something that's not there, correct?

12 A. I do not believe that it's more
13 probable than not.

14 Q. Because why would it make sense that
15 somebody would reach for something for a
16 phantom object that doesn't exist, because we
17 all know the gun was found right at the corner
18 of Indiana and the alley, right?

19 A. Yes.

20 Q. Let me ask you a question. Did you
21 know that Dakota Bright's cell phone was
22 found -- I believe it's on this fence or that
23 fence. He dropped the cell phone when he
24 jumped the fence, were you aware of that?

1 MR. FIEWEGER: Objection. Foundation.

2 There's nothing establishing anything about a
3 cell phone or who possessed a cell phone.

4 MR. THOMPSON: Judge, we're going to have a
5 witness testify. If he reviewed the reports,
6 he should know that Dakota Bright's cell phone
7 was located on that flight path. I think it's
8 proper inquiry.

9 HEARING OFFICER WOOD: I'll let you ask the
10 question.

11 BY MR. GRACE:

12 Q. Did you know that, Mr. Gennaco?

13 A. Did I know what?

14 Q. That Dakota Bright's cell phone was
15 found on one of these fences, either this
16 fence -- it was found -- my partner is helping
17 me. It was found right next to the six-foot
18 fence that Brandon Ternand was standing at, did
19 you know he that?

20 A. My understanding is a cell phone was
21 located.

22 Q. They located a cell phone that a
23 Chicago police officer inventoried and
24 accredited to owner of as being Dakota Bright?

1 A. My understanding it was not
2 conclusively determined it was Mr. Bright's
3 phone.

4 Q. Well, the phone was working, it was
5 charged, it hadn't been destroyed or decayed by
6 rain, and it was a cell phone that could
7 operate. Okay? And it was located right
8 there?

9 A. Yes.

10 Q. So is it possible that Dakota Bright
11 dropped his cell phone, jumped over that last
12 fence, realized he was trapped, and went to
13 reach for his cell phone that was in his left
14 pocket?

15 A. Not based on the evidence that I
16 reviewed.

17 Q. Is it possible that Dakota Bright went
18 to pull up his pants?

19 A. Anything's possible, sir.

20 Q. Correct. Is it possible that Dakota
21 Bright -- did you know that Dakota Bright
22 received injuries as he was jumping those
23 fences to his left hand and left leg?

24 A. I do know that.

1 Q. So it could be possible that Dakota
2 Bright, and tragically, okay? Tragically was
3 telegraphing to or giving signals to Brandon
4 Ternand that Brandon was misinterpreting for
5 someone reaching for a gun; is that possible?

6 A. It sure is.

7 Q. And that's the tragedy of this case,
8 is it not?

9 A. It is.

10 Q. Dakota Bright had no idea that by him
11 ditching the gun and not telling the police
12 officers, running north on that street
13 without -- while holding his left side and
14 running down and stopping at that last fence,
15 was sending signals to Brandon Ternand that
16 Brandon was taking as someone had a gun, right?

17 A. I think there is evidence that Officer
18 Ternand at the time he shot may have still
19 believed that Mr. Bright was carrying a weapon.

20 Q. You -- it's not a big leap. I
21 appreciate that. But you acknowledge that in
22 Brandon Ternand's mind, the reasonable
23 objective position of Brandon Ternand is this
24 guy still had a gun, right?

1 A. Yes.

2 Q. And it's less than 50 feet away. Do
3 you know the distances -- do you know the
4 distances by which Chicago police officers are
5 required to qualify for each and every year
6 with a handgun?

7 A. I don't know for sure.

8 Q. There's 7 feet, 21 feet -- I was told
9 there was no math today. 21 yards, 25 feet,
10 2 -- stop.

11 MR. FIEWEGER: Objection. Foundation.

12 MR. GRACE: I agree.

13 BY MR. GRACE:

14 Q. They are required to qualify at 21
15 yards, 45 yards and 75 yards. Are you aware
16 of --

17 A. No.

18 Q. I'm sorry. 21 feet, 15 feet, and 75
19 feet, are you aware that that's the
20 qualifications every single calendar year a
21 Chicago police officer needs to qualify at the
22 range with a firearm? Are you aware of that?

23 A. I'm not aware with regard to the
24 police department, but that is a standard

1 qualification for most agencies.

2 Q. Very good. So why in God's name would
3 you have a police officer qualify at 75 feet,
4 okay, and not anticipate that he would be able
5 to fire a round from that distance with some
6 degree of accuracy?

7 A. I think that is an expectation.

8 Q. That's correct.

9 And Brandon Ternand was not at
10 the extent of that portion, was he? He was
11 only at 54 feet, correct?

12 A. Yes.

13 Q. He was doing what he was trained to do
14 when he fired the gun with respect to distance,
15 agreed?

16 A. No.

17 Q. Okay. Let me ask you another
18 question. You have a problem with the number
19 of shots fired by Brandon; is that correct?

20 A. I don't have a problem with them.

21 Q. Well, your opinion, which comes to the
22 ultimate conclusion that this was an
23 unreasonable shooting, one of the basis is the
24 fact that he didn't fire more than one round;

1 is that correct?

2 A. The fact that one round was fired is
3 inconsistent with his version of events.

4 Q. Okay. Don't we want to teach our
5 officers fire discipline? Isn't that something
6 that's ingrained in them at the academy?

7 A. Yes.

8 Q. Isn't it true that you are supposed to
9 stop using deadly force when the threat no
10 longer exists; isn't that true?

11 A. Yes.

12 Q. Isn't it true that if Brandon Ternand
13 on his first shot, okay, was able to stop the
14 threat from persisting, that he actually showed
15 good fire discipline by not continuing to fire
16 his weapon?

17 A. Unfortunately, under the circumstances
18 that Officer Ternand related, that's not
19 possible.

20 Q. How is that not possible? Let me just
21 ask so you can try to answer. What
22 specifically did Officer Ternand do that makes
23 you believe he did not have good fire
24 discipline?

1 A. If you believe that he was being
2 aggressed and under threat and felt threat of
3 deadly force was towards him, it's just not
4 possible for one round to be -- to be
5 sufficient for an officer to feel like he has
6 eliminated the threat. Even if a person goes
7 immediately to the ground.

8 Q. How could that be?

9 Let me ask you a question. I get
10 your point. So what you're doing is you are
11 penalizing him, okay? You are penalizing
12 Officer Ternand which helps lead to your
13 ultimate conclusion, you are penalizing him
14 because his first shot was good, and he stopped
15 the threat, that's what you're doing?

16 A. That's not what I'm doing.

17 Q. How can you not be? You are saying
18 that Officer Ternand, there's no way he would
19 have known after firing the first shot that the
20 threat went away; is that correct?

21 A. What I'm saying it's not possible,
22 based on my experience, for an officer to have
23 that degree of observation and if the time just
24 doesn't work out.

1 Q. But it did in this case, though,
2 didn't it?

3 A. Based on his statement.

4 Q. Well, based on the evidence, only one
5 shot was fired?

6 A. My point is that when officers are
7 being aggressed and feel that their lives are
8 in danger, that they are trained to eliminate
9 the threat, and that usually takes at least two
10 rounds and usually more before the threat is
11 eliminated in their minds.

12 Q. Let me ask you a question. Okay? If
13 Officer Ternand came running down -- running
14 down this alley -- this lot and into these
15 backyards, and Dakota Bright's demeanor changed
16 at that last gate, and Officer Ternand had to
17 make a quick decision. Okay? And he quickly
18 aimed his gun and fired at Dakota Bright one
19 quick shot, is that possible?

20 A. Based on the circumstances, it's
21 highly unlikely that one round would have come
22 from Officer Ternand based on his assessment
23 and his observations as stated by him
24 repeatedly in various interviews.

1 Q. Dakota Bright's demeanor changed when
2 he hit that last fence; is that right?

3 A. I don't know.

4 Q. Dakota Bright -- Ternand said he went
5 to his left side. We know Dakota Bright
6 stopped when he hit that last fence -- when he
7 got over that last fence?

8 A. We don't know that.

9 Q. Okay. What do you base on the fact
10 that that didn't happen?

11 A. I don't base it one way or the other.
12 All we have is one person who is still alive
13 and can talk about that.

14 Q. So it's unimpeached, un rebutted
15 evidence, right?

16 A. No, it's not.

17 Q. What is impeached about Brandon
18 Ternand's evidence that Dakota Bright when he
19 jumped that last fence, and Dakota Bright knew
20 that Bruno was here, Sledge was here and --

21 MR. FIEWEGER: Objection.

22 BY MR. GRACE:

23 Q. -- and Razo was on Prairie --

24 MR. FIEWEGER: Objection. There's no

1 foundation about Dakota Bright knowing anything
2 about where any officers were.

3 MR. GRACE: Wasn't that an objection,
4 Judge, that you told Mr. Thompson was improper
5 because he should be allowed to go into the
6 intent of Dakota Bright? Didn't we talk about
7 that earlier?

8 HEARING OFFICER WOOD: I don't see how he
9 can possibly speculate whether Dakota Bright
10 knew where all those cops were. Who can answer
11 that question?

12 MR. GRACE: I agree with you. That's
13 argument for closing argument. I agree with
14 you on that point. Fair enough. I agree with
15 you on that point.

16 HEARING OFFICER WOOD: Okay.

17 BY MR. GRACE:

18 Q. So I think my point I was trying to
19 make is that your position is that Dakota
20 Bright would not have made any different
21 movement over the fence, it doesn't make any
22 sense that he would change his demeanor?

23 A. I don't know about demeanor. I don't
24 know what that means.

1 Q. I'm trying to think of a word we can
2 use. Trajectory of his body or does something
3 different than he was doing when he was running
4 up and down the lots?

5 A. He could have glanced back, and I said
6 as much in my report.

7 Q. If he glances back -- I'm just trying
8 to get you into the mind-set of this officer.
9 Okay?

10 When Brandon's running down
11 that -- gets to that six-foot fence, and Dakota
12 Bright glances back, and Ternand sees the
13 movements of Dakota Bright, okay, Ternand is
14 processing this, correct?

15 A. Yes.

16 Q. He is using all of his training,
17 correct?

18 A. Yes.

19 Q. Or he should be?

20 A. He should be, but I'm not sure he is.

21 Q. He should be using all of his
22 training, right?

23 A. He should be.

24 Q. He is also using everything he knows

1 about human nature and being afraid and scared
2 and all of the things that go into that, right?

3 A. You are afraid. You don't know about
4 being afraid.

5 Q. These police officers aren't robots,
6 are they?

7 A. No.

8 Q. They're afraid just like and I are,
9 right?

10 A. They can be.

11 Q. Unfortunately, you and my job is to
12 run away from danger, and their job is to run
13 towards danger?

14 A. Not always.

15 Q. When you see a guy standing on the
16 corner of Indiana dressed in DOD gang colors
17 holding a white pistol, our expectation is the
18 guys we pay on the force should run towards
19 that guy; is that right?

20 A. No.

21 Q. Our expectation we should let Dakota
22 Bright go?

23 A. No.

24 Q. What is your expectation of Brandon

1 Ternand on that day on November 8th, 2012?

2 What should he have done that you find so
3 wrong?

4 A. He should have worked with his
5 partners. He had three other partners there.
6 He should have worked with them to safely
7 apprehend the individual.

8 Q. How do you do it? That's a great
9 theoretical statement to make in a classroom.
10 I'm asking you, what are the tactics that you
11 say he should have done? Buttress that with
12 where in the general orders does it say he
13 should have done those tactics that you're
14 about to tell us about.

15 MR. FIEWEGER: Objection. Asked and
16 answered. He's covered what he thought he
17 should have done and what he is critical of on
18 direct. You're going to go over the direct
19 testimony again.

20 MR. GRACE: Kind of fair enough. After
21 this question, Judge, I think I'll be close to
22 being done.

23 HEARING OFFICER WOOD: Thank you.

24 BY MR. GRACE:

1 Q. Go ahead. Do you want me to repeat
2 it?

3 A. Either you or the reporter.

4 Q. Maybe I can chop it down a little bit.
5 The tactics that you said
6 that -- I asked you if they should have gone
7 chasing after Dakota Bright or should have
8 tried to apprehend Dakota Bright, and you
9 agreed, yes, they should have tried to
10 apprehend Dakota Bright, correct?

11 A. Yes.

12 Q. And I said -- and you disagree with
13 the tactics that they used that day, correct?

14 A. Most of them.

15 Q. And I'm asking you, okay, what tactics
16 should they have used at that point when they
17 see him standing there with a gun in his right
18 hand dressed like a DOD gang member?

19 MR. FIEWEGER: Same objection.

20 HEARING OFFICER WOOD: He testified to all
21 of that on direct, so I don't know what you're
22 asking him.

23 MR. FIEWEGER: Does he want him to go
24 through again, at this point you should have

1 done this, because that's what the question's
2 asking for.

3 MR. GRACE: This last group of questioning.

4 HEARING OFFICER WOOD: Let me say this. On
5 direct, he testified to the areas that he was
6 critical of in terms of -- he said this is what
7 he criticized, this is what he criticized, this
8 is what he thinks should have happened. Am I
9 right?

10 MR. FIEWEGER: Yes. And he also said what
11 he thought should have been done, should have
12 been on the radio more, step behind the tree.

13 MR. GRACE: This is cross. What he said,
14 he had a problem with the foot chase. I know
15 what you're saying, Judge. I'll move on.

16 BY MR. GRACE:

17 Q. I'll tell you, you had a problem with
18 the foot chase, correct?

19 A. I don't know about problem.

20 Q. Okay. You criticized the foot chase?

21 A. I thought there should have been more
22 communication, should have been a split. There
23 were two splits actually. He shouldn't have
24 jumped a fence, and he should have continued to

1 get the uniforms over there by communicating
2 where Mr. Bright was.

3 Q. Well, they went over the radio and the
4 call was made out man running northbound on St.
5 Louis dressed in red, holding his left side.

6 A. That's in the car.

7 Q. Okay. That was the call, correct?

8 A. I'm talking about continual
9 communication, and I am focusing on after he
10 gets out of the car, where there is none.

11 Q. There is. There is. There is, He's
12 got a gun to Officer Bruno right here.
13 Bruno -- Officer Ternand sees Bruno paralleling
14 down the alley, correct?

15 A. Yes. And, as I indicated, if I
16 didn't, I'll be very clear, his alerting Bruno
17 to the belief that he has a gun was a sound
18 tactic.

19 Q. Okay. Okay. And the question is:
20 Ternand continued to chase after Dakota Bright,
21 and you believe that he should have stopped the
22 chase at this point?

23 A. I believe that once he encountered a
24 three-foot fence, he should not have continued

1 in that direction, yes.

2 Q. So a Chicago police officer is
3 supposed to be encumbered and ended on a
4 three-foot fence?

5 A. Chicago police officer should be
6 considering his safety as predominant.

7 Q. Well, he is considering his safety,
8 but I sure the hell hope he can traverse a
9 three-foot fence.

10 A. That is not consistent with officer
11 safety principles.

12 Q. Okay. What number fence is it okay to
13 traverse? A two-foot fence; is that okay?

14 I know it's a ridiculous
15 question, but isn't it true that police
16 officers need to put themselves into dangerous
17 situations every day to get the bad guys? They
18 need to do it every day. And sometimes we
19 can't sit here, you'd agree, and second guess
20 every decision that they make?

21 A. We're always second guessing officers,
22 and we should, and they should second guess
23 themselves.

24 Q. Is it fair to terminate a police

1 officer who's trying to chase after a bad guy
2 when he is following the general orders?

3 MR. FIEWEGER: Objection.

4 HEARING OFFICER WOOD: Sustained.

5 BY MR. GRACE:

6 Q. Last question I got for you. Are you
7 aware that the Chicago Police Department gave
8 him a commendation for his actions on that day?
9 Are you aware of that?

10 A. I have been informed. There is a
11 difference between valor and appropriate
12 conduct.

13 MR. GRACE: I guess you should talk to the
14 Superintendent. No further questions.

15 HEARING OFFICER WOOD: Thank you. Any
16 redirect?

17 MR. FIEWEGER: Just a little bit.

18 REDIRECT EXAMINATION

19 BY MR. FIEWEGER:

20 Q. Counsel asked you some questions about
21 fire discipline, right?

22 A. Yes.

23 Q. I think your point was when an officer
24 is aggressed, it's difficult for them, if not

1 impossible, to exercise fire discipline to the
2 extent they only fire one shot?

3 A. Yes, that's correct.

4 Q. Would it affect your opinion at all if
5 you were informed that Officer Ternand had
6 testified that he wasn't sure whether or not he
7 hit Dakota Bright when he fired his weapon?

8 A. Yes.

9 Q. How so?

10 A. Because if he's not sure that he's
11 actually eliminated the threat, the threat
12 still exists, and it would suggest that more
13 rounds would need to be fired.

14 Q. Now, in response to questions from
15 Mr. Thompson, you indicated you had reviewed
16 the tactical response report?

17 A. Correct.

18 Q. And that tactical response report was
19 approved by then the commanding officer, Eddie
20 Johnson, correct?

21 A. Correct.

22 Q. And Mr. Johnson is currently the
23 commander of the Chicago Police Department?

24 A. Superintendent.

1 Q. Superintendent?

2 A. Correct.

3 Q. Was there anything about the timing of
4 that approval that you noticed?

5 A. It was remarkable that the approval
6 occurred on the same day of the incident.

7 Q. Why do you think that was remarkable?

8 A. I've never seen it before, but at that
9 point, how can you judge or assess the
10 legitimacy of the use of deadly force when all
11 the facts haven't come in?

12 Q. Now, I think you also indicated in
13 response to questions from Mr. Thompson that
14 you didn't conclude that Officer Ternand was
15 lying, but that you had some problems with his
16 account. How do you square the two?

17 A. You don't. And lying suggests
18 mandraya (phonetic). And I'm not here to talk
19 about, you know, what was in the mind of the
20 officer. All I'm suggesting is what he says
21 happened and what the physical evidence
22 suggests happened or indicates happened do not
23 match up.

24 Q. You indicated that you had reviewed

1 some materials after you drafted your report,
2 correct?

3 A. Yes.

4 Q. I believe those were training
5 materials that were provided to you?

6 A. Yes.

7 Q. Why did you review those?

8 A. Because I thought it was important and
9 always is important to understand the training
10 that an officer is provided by the department
11 and ensure that they match up with the policy,
12 so we have a better understanding of what is
13 expected of an officer.

14 Q. Why didn't you update the report?

15 A. The report -- I reviewed the materials
16 after I saw the training -- I reviewed the
17 training.

18 Q. Why did you not update your report?

19 A. I didn't see anything that struck me
20 as a change in my view and opinions.

21 Q. You were asked some questions
22 regarding the nature of the offense that Dakota
23 Bright may have committed as he walked into
24 that alley that afternoon, right?

1 A. Yes, sir.

2 Q. Do you remember those questions?

3 A. I do.

4 Q. And you were asked -- it was indicated
5 to you that it was possible that Dakota Bright
6 had committed a nonprobational Class 4 felony.
7 Do you remember that?

8 A. I remember the discussion.

9 Q. If that is, in fact, the state of the
10 law, does that affect your opinion at all?

11 A. No.

12 Q. Why not?

13 A. Because the general order talks about
14 forcible felony. I do not believe it was a
15 forcible felony. Whether it's a probationary
16 offense or nonprobationary offense is
17 relatively irrelevant. It doesn't move
18 anything materially.

19 Q. This I believe was in the context of
20 the Graham analysis, I believe.

21 A. Doesn't affect the Graham analysis to
22 any significant degree.

23 Q. Are you aware of anything -- any
24 evidence that indicates that the time that

1 Officer Ternand and Officer Razo
2 observed -- first observed Dakota Bright, that
3 they were aware that that weapon was loaded?

4 A. No.

5 Q. Are you aware of anything that
6 indicated that they were aware that at the time
7 they observed Dakota Bright, that he may have
8 had a prior conviction?

9 A. No.

10 Q. Mr. Thompson I believe asked you some
11 questions about the third prong of the Graham
12 analysis. Do you remember those?

13 A. Yes.

14 Q. And that was about whether the suspect
15 is actively resisting or attempting to evade
16 arrest?

17 A. Yes.

18 Q. How does that prong apply? How does
19 that work?

20 A. It's consideration. One of the things
21 you evaluate, and I don't think there's any
22 dispute really that he was trying to get away,
23 he was trying to flee.

24 Q. Would it be your -- is it accurate to

1 conclude that if a suspect is attempting to
2 evade arrest as opposed to actively resisting
3 arrest, that that would be a factor that would
4 weigh against the use of deadly force?

5 A. It's a difference, yes. It's
6 certainly a heightened level of threat if
7 somebody is resisting as opposed to merely
8 trying to escape.

9 MR. FIEWEGER: That's all I have.

10 HEARING OFFICER WOOD: Anything else?

11 MR. GRACE: Just a couple of questions on
12 redirect.

13 RECROSS-EXAMINATION

14 By MR. GRACE:

15 Q. Sir, you answered questions about
16 forcible felonies he just asked you; is that
17 correct?

18 A. I think the question had to do with
19 Graham versus Connor analysis.

20 Q. Right. According to the general
21 orders, a sworn member is justified in using a
22 force likely to cause death or great bodily
23 harm only when he or she reasonably believes
24 that that force is necessary, one, to prevent

1 death or great bodily harm to himself or
2 another person; and two, to prevent an arrestee
3 from being -- an arrest from being defeated by
4 resistance or escape. And the sworn member
5 reasonably believes the offender has committed
6 or is attempting to commit a forcible felony,
7 correct?

8 A. Yes.

9 Q. And you've indicated that you do not
10 find that an unlawful use of a weapon is a
11 forcible felony, so Mr. Ternand cannot avail
12 himself to that part of the statute, correct?

13 A. Based on the information, yes.

14 Q. And then on the general order, it
15 gives definitions of what a forcible felony is,
16 correct?

17 A. Yes.

18 Q. And it quotes straight to forcible
19 felonies, which is found in the Illinois
20 criminal code; is that correct?

21 A. I'd have to take a look.

22 Q. Here's the general order right here.

23 MR. FIEWEGER: That's the second?

24 BY MR. GRACE:

1 Q. Second page of the general order. I'm
2 showing you what's been marked as --

3 HEARING OFFICER WOOD: Exhibit 4.

4 BY MR. GRACE:

5 Q. Exhibit 4. The second page of the
6 General Order 03-02-03 it references what
7 forcible felonies are, correct?

8 A. Correct.

9 Q. And then it gives a whole laundry list
10 of some pretty scary crimes; is that right?

11 A. Yes.

12 Q. Kidnapping, heinous battery, all kinds
13 of things?

14 A. Right.

15 Q. The last sentence, I think I got it
16 underlined for you, what does it say?

17 A. "And any other felony which involves
18 use or threat of physical force or violence
19 against any individual."

20 Q. So I think the disconnect that we've
21 had on this side of the room is that an
22 unlawful use of a weapon would fall under that
23 underlined portion, at least in Illinois?

24 MR. FIEWEGER: I'm going to object. It

1 calls for a legal conclusion and also
2 inconsistent with the law.

3 MR. GRACE: Whoa.

4 MR. FIEWEGER: We'll bring case law. I
5 didn't know this was going to be an issue.

6 MR. GRACE: What is inconsistent, Jim?

7 MR. FIEWEGER: That the use of an unlawful
8 possession of a weapon is forcible felony. I
9 don't believe that's consistent with the law.

10 HEARING OFFICER WOOD: That's not what it
11 says. Okay?

12 MR. GRACE: So --

13 HEARING OFFICER WOOD: Stop. That's not
14 what it says.

15 The question you asked him is a
16 mischaracterization of what this says. So I
17 would object -- the objection would be
18 sustained on that ground, and it would be
19 sustained on the second ground. You're asking
20 him to make a legal opinion, and he is not here
21 in his capacity as an attorney.

22 MR. GRACE: Hold on one second. Can I see
23 the exhibit back, sir?

24 My point is this, your Honor --

1 and I'm not trying to be difficult here, trust
2 me. We've had a long day.

3 MR. FIEWEGER: I'm not trying to, either.

4 MR. GRACE: Under the Illinois law,
5 forcible felony, okay, is any other felony.
6 Okay? We got the laundry list and any other
7 felony which involves a use or threat of
8 physical force or violence against any
9 individual. Okay? What my question -- where I
10 was leading to is: We got a guy going down the
11 alley with a gun in his hand who is about to
12 possibly -- it's possible, to commit a forcible
13 felony, or he could have been walking to the
14 gun range. I agree. But my point is that it
15 doesn't completely remove that prong because it
16 isn't a forcible felony, it's Brandon's
17 interpretation that the guy could have been
18 going to commit a forcible felony which allows
19 for the use of deadly force.

20 HEARING OFFICER WOOD: The only thing you
21 can ask this witness is whether or not it falls
22 within this, and he says yes, it does, or no,
23 it doesn't. That's it.

24 MR. GRACE: Okay. I'll ask that question

1 and we'll go to lunch.

2 HEARING OFFICER WOOD: Okay.

3 BY MR. GRACE:

4 Q. Do you believe, okay, that an
5 individual standing at the mouth of the alley
6 with a gun in his hand may be in the process of
7 or attempting to commit a forcible felony?

8 A. No.

9 MR. GRACE: I got to live with that. Thank
10 you.

11 HEARING OFFICER WOOD: You do.

12 MR. GRACE: Because you are not going to
13 let me go any further.

14 HEARING OFFICER WOOD: Anything else for
15 this witness?

16 MR. FIEWEGER: No.

17 HEARING OFFICER WOOD: Un-mic yourself.
18 You may step down.

19 (Witness Excused.)

20 HEARING OFFICER WOOD: Off the record for a
21 second.

22 (Discussion off the
23 record.)

24 (Witness was duly

1 sworn.)

2 RENISHA TERNAND,

3 called as a witness herein, after having been
4 first duly sworn, was examined and testified as
5 follows:

6 DIRECT EXAMINATION

7 BY MR. GRACE

8 Q. Could you please keep your voice up.
9 State your name and spell it for the record.

10 A. Renisha, R-E-N-I-S-H-A. Last name
11 Ternand, T-E-R-N-A-N-D.

12 Q. How old are you?

13 A. 32.

14 Q. What's your relationship to Brandon
15 Ternand?

16 A. He's my husband.

17 Q. Renisha where did you grow up?

18 A. Kankakee.

19 Q. Where did you go to high school?

20 A. In Kankakee and Washington. First
21 half I went to school in Washington State and
22 second half I graduated from Kankakee High
23 School.

24 Q. Did your family move out to Washington

1 State?

2 A. Yes.

3 Q. And dragged you back?

4 A. And then we moved back here.

5 Q. Did you go to college?

6 A. Yes.

7 Q. Where did you go?

8 A. Chicago State.

9 Q. What's your degree in?

10 A. Psychology and occupational therapy.

11 Q. Are you employed?

12 A. Yes.

13 Q. Where do you work?

14 A. Licensed and Healthcare Center as an
15 occupational therapist.

16 Q. How do you like that work?

17 A. I love my job.

18 Q. How long have you been married to
19 Brandon?

20 A. Nine years.

21 Q. And do you have any children?

22 A. Yes, we have an eight-year-old son.

23 Q. What's his name?

24 A. Jayden.

1 Q. And without telling me specifically
2 where you live, can you give me the general
3 area of the City you live in?

4 A. We live on the south side.

5 Q. Own or rent?

6 A. Own.

7 Q. Single-family house?

8 A. Yes.

9 Q. How did you meet Brandon?

10 A. We met at a teen nightclub.

11 Q. How old were you at that time?

12 A. 18.

13 Q. How old was Brandon?

14 A. 20.

15 Q. What drew you to him?

16 A. Brandon is -- he is very
17 compassionate, and he's very easy to talk to.
18 He's always willing to help people out. That's
19 what drew me to him.

20 Q. So what year did you get married?

21 A. We got married in 2009.

22 Q. So you met him in 2004 and got married
23 in 2009. When you met him, was he a police
24 officer?

1 A. No.

2 Q. Did he express to you he wanted to be
3 a police officer?

4 A. From the first day I met him, all he
5 talked about was being a Chicago police
6 officer. That was always his childhood dream,
7 to be a police officer. For the City of
8 Chicago specifically.

9 Q. Did he ever tell you why he wanted to
10 be CPD?

11 A. He just always likes helping people,
12 you know, and working with people.

13 Q. Okay. So you guys were married in
14 2009. And you lived obviously together in your
15 home on the south side, correct?

16 A. Uh-huh.

17 Q. How do you feel about him being a
18 police officer?

19 A. Terrified, honestly, because he works
20 in like the worst of the worst parts of the
21 city. So every night I have to go to bed
22 wondering like am I going to get that call, am
23 I going to have to explain to my son where his
24 dad is, why he is not coming home. But at the

1 same time, I'm very proud of him. He loves his
2 work, and he is one of the most hard-working
3 people I know.

4 Q. And have you spoken to him about your
5 fears of him being a police officer?

6 A. Yeah.

7 Q. And have you had conversations about
8 possibly not being a police officer?

9 A. No.

10 Q. Why not?

11 A. Because that's what he loves to do, so
12 I have to support him in his decision.

13 Q. Now, the 15 or so years you've known
14 Brandon, do you have an opinion about his
15 honesty?

16 A. He's one of the most honest people I
17 know. And sometimes he might be a little too
18 honest, but that's okay. Like about my cooking
19 or what I'm wearing, so yeah.

20 Q. Do you think Brandon should be allowed
21 to go back --

22 A. Absolutely.

23 Q. Let me ask the question. Do you think
24 Brandon should be allowed to go back to be a

1 Chicago police officer?

2 A. Absolutely.

3 Q. Do you think he is a credit to the
4 uniform?

5 A. Absolutely.

6 MR. GRACE: Thank you for coming.

7 MR. FIEWEGER: No questions.

8 HEARING OFFICER WOOD: Thank you. You may
9 step down. Please remove your mic.

10 (Witness Excused.)

11 HEARING OFFICER WOOD: No further witnesses
12 today. We are going to suspend this hearing,
13 and we will resume tomorrow at 10:30, not 10:00
14 o'clock. Thank you all.

15 (WHEREUPON, the proceedings
16 were adjourned at 1:25 p.m.
17 and continued to May 18,
18 2018, at the hour of 10:30
19 a.m.)

20

21

22

23

24

1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF C O O K)

4 MAUREEN A. WOODMAN, C.S.R., being first
5 duly sworn, says that she is a court reporter
6 doing business in the City of Chicago; that she
7 reported in shorthand the proceedings had at the
8 hearing of said cause; that the foregoing is a
9 true and correct transcript of her shorthand
10 notes, so taken as aforesaid, and contains all
11 the proceedings of said hearing.

12
13
14 A handwritten signature in dark ink, appearing to read 'Maureen A. Woodman', is written over a horizontal line.

15 MAUREEN A. WOODMAN, CSR
16 License No. 084.002740

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